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INTERPRETATION OF STATUTES

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INTERPRETATION OF STATUTES

Q. What do you understand by the term 'Interpretation of Statutes'? What is the object of Interpretation?
Enacted laws, especially the modern acts and rules, are drafted by legal experts and it could be expected that the language used will leave little room for interpretation or construction. But the experience of all those who have to bear and share the task of application of the law has been different, ***Keshav Mills Co. Ltd. v. CIT. AIR 1965 SC 1636*.**

Interpretation means the art of finding out the true sense of an enactment by giving the words of the enactment their natural and ordinary meaning. It is the process of ascertaining the true meaning of the words used in a statute. The Court is not expected to interpret arbitrarily and therefore there have been certain principles which have evolved out of the continuous exercise by the Courts. These principles are sometimes called 'rules of interpretation'.

The object of interpretation of statutes is to determine the intention of the legislature conveyed expressly or impliedly in the language used. As stated by SALMOND, "by interpretation or construction is meant, the process by which the courts seek to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed."

Elaborate rules of interpretation were evolved even at a very early stage of Hindu civilization and culture. The rules given by 'Jaimini', the author of Mimamsat Sutras, originally meant for srutis were employed for the interpretation of Smritis also.

In the process of interpretation, several aids are used. They may be statutory or non-statutory. Statutory aids may be illustrated by the General Clauses Act, 1897 and by specific definitions contained in individuals Acts whereas non-statutory aids are illustrated by common law rules of interpretation (including certain presumptions relating to interpretation) and also by case-laws relating to the interpretation of statutes.

Meaning and Definition of Interpretation
According to Salmond interpretation or construction is the process by which the courts seek to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed." It has been said that there is a distinction between the two expressions. As explained by Cooley: "Interpretation differs from construction in the sense that the former is the art of finding out the true sense of any form of words; i.e. the sense that their author intended to convey. Construction on the other hand, is the drawing of conclusions, respecting the subjects that lie beyond the direct expression of the text. This distinction has been widely criticized.

Interpretation of statute is the process of ascertaining the true meaning of the words used in a statute. When the language of the statute is clear, there is no need for the rules of interpretation. But, in certain cases, more than one meaning may be derived from the same word or sentence. It is, therefore, necessary to interpret the statute to find out the real intention of the statute.

Interpretation of Statutes is required for two basic reasons:
1. Legislative Language - Legislative language may be complicated for a layman, and hence may require interpretation; and
2. Legislative Intent - The intention of the legislature or Legislative intent assimilates two aspects: a. the concept of 'meaning', i.e., what the word means; and b. the concept of 'purpose'
and 'object' or the 'reason' or 'spirit' pervading through the statute.

Some Important points to be taken care of in the context of interpreting Statutes:
- Intention of the legislature.

- Statute must be read as a whole in its Context.
- Statute should be Construed so as to make it Effective and Workable – if statutory provision is ambiguous and capable of various constructions, then that construction must be adopted which will give meaning and effect to the other provisions of the enactment rather than that which will give none.
- If meaning is plain, effect must be given to it irrespective of consequences.
- The process of construction combines both the literal and purposive approaches. The purposive construction rule highlights that you should shift from literal construction when it leads to absurdity.

Nature and Scope

Necessity of interpretation would arise only where the language of a statutory provision is ambiguous, not clear or where two views are possible or where the provision gives a different meaning defeating the object of the statute.

If the language is clear and unambiguous, no need of interpretation would arise. In this regard, a Constitution Bench of five Judges of the Supreme Court in ***R.S. Nayak v A.R. Antulay, AIR 1984 SC 684*** has held:
"… If the words of the Statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the Statute would be self-defeating."

Again, Supreme Court in ***Grasim Industries Ltd. v Collector of Customs, Bombay, (2002)4 SCC 297***, has followed the same principle and observed:
"Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for court to take upon itself the task of amending or altering the statutory provisions."

The purpose of Interpretation of Statutes is to help the Judge to ascertain the intention of the Legislature – not to control that intention or to confine it within the limits, which the Judge may deem reasonable or expedient.

The correct is one that best harmonises the words with the object of the statute. As stated by Iyer J. "to be literal in meaning is to see the skin and miss the soul. The judicial key of construction is the composite perception of the deha and the dehi of the provision." ***[State of Punjab v. Qaisar Jehan Begum, AIR 1963SC 1604]***

According to **Blackstone** the fairest and rational method for interpreting a statute is by exploring the intention of the Legislature through the most natural and probable signs which are 'either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law'.

Q. Is there any difference between construction of statutes and interpretation of statutes?

The words Interpretation and construction are generally used synonymously even though jurisprudentially they are perhaps different.

Interpretation means the art of finding out the true sense of an enactment by giving the words their natural and ordinary meaning. Whereas **construction** means drawing conclusions on the basis of the true spirit of the enactment even though the same does not appear if the words used in the enactment are given their natural meaning.

Thus, in simple terms it can be said that, in Interpretation, we find out the true meaning of the words used in the enactment but in construction we draw the real sense of the enactment itself which might not prima facie reflected by the words used in the enactment.

However, a thin line of distinction was often drawn between Interpretation and construction in the good old days when the judges had uncharted freedom of judicial legislation. Cooley made an effort to distinguish

between Interpretation and construction. According to him, Interpretation is the art of finding out the true sense of any form of words and enabling others to derive from them the same meaning which the author intended to convey, Whereas construction is the process of drawing conclusions, respecting subjects that lie beyond the direct expression of the text, which are in the spirit though not within the letter of law.

However, in modern times when statutes are enacted after great deliberation and careful scrutiny, the freedom of judicial legislation curbed to a great extent and as such the distinction between Interpretation and construction hardly exist Regarding the distinction forwarded by Cooley, Sutherland stated that the distinction is 'erroneous'. Such distinction is, according to him is based on the wrong assumption that Interpretation determines the meaning of words, and construction determines the application of words to facts, for one process cannot exclude the other, or if one does, it means that Interpretation must include construction or that there is no such thing as Interpretation and that all is construction.

Salmond does not distinguish between the terms Interpretation and construction. Justice White also confirmed the above view of Salmond. In ***United States vs F.W. Keitel (211 US 370:53 Law Ed 230)*** Justice White observed that although there is some distinction between them, they are so hard to disentangle that they cannot afford a suitable basis for discussion; and in common usage Interpretation and construction are usually understood as having the same significance.

According to Dias, it is difficult to distinguish between Interpretation and construction, since it is difficult to say when Interpretation leaves off and construction begins. He further stated that the distinction between the two is so thin that it is hard to distinguish between them.

Q. Explain the 'Literal or Grammatical Rule of Interpretation' with case laws.

In construing Statutes, the cardinal rule is to construe its provisions literally and grammatically giving the words their ordinary and natural meaning. This rule is also known as the **Plain meaning rule**. The first and foremost step in the course of interpretation is to examine the language and the literal meaning of the statute. The words in an enactment have their own natural effect and the construction of an act depends on its wording. There should be no additions or substitution of words in the construction of statutes and in its interpretation. The primary rule is to interpret words as they are. It should be taken into note that the rule can be applied only when the meanings of the words are clear i.e. words should be simple so that the language is plain and only one meaning can be derived out of the statute.

In ***Municipal Board V. State Transport Authority***, Rajasthan, the location of a bus stand was changed by the Regional Transport Authority. An application could be moved within 30 days of receipt of order of regional transport authority according to section 64 A of the Motor vehicles Act, 1939. The application was moved after 30 days on the contention that statute must be read as "30 days from the knowledge of the order". The Supreme Court held that literal interpretation must be made and hence rejected the application as invalid.

Lord Atkinson stated, 'In the construction of statutes their words must be interpreted in their ordinary grammatical sense unless there be something in the context or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense.'

<u>Meaning</u>

To avoid ambiguity, legislatures often include "definitions" sections within a statute, which explicitly define the most important terms used in that statute. But some statutes omit a definitions section entirely, or (more commonly) fail to define a particular term. The plain meaning rule attempts to guide courts faced with litigation that turns on the meaning of a term not defined by the statute, or on that of a word found within a definition itself.

If the words are clear, they must be applied, even though the intention of the legislator may have been different or the result is harsh or undesirable. **The literal rule is what the law says instead of what the law means.**

A literal construction would not be denied only because the consequences to comply with the same may lead to a penalty. The courts should not be overzealous in searching for ambiguities or obscurities in words which are plain. ***Tata Consultancy Services v. State of A.P, (2005) 1 SCC 308.***

The literal rule may be understood subject to the following conditions –

- Statute may itself provide a special meaning for a term, which is usually to be found in the interpretation section.
- Technical words are given ordinary technical meaning if the statute has not specified any other.
- Words will not be inserted by implication.
- Words undergo shifts in meaning in course of time.
- It should always be remembered that words acquire significance from their context.

When it is said that words are to be understood first in their natural ordinary and popular sense, it is meant that words must be ascribed that natural, ordinary or popular meaning which they have in relation to the subject matter with reference to which and the context in which they have been used in the Statute. In the statement of the rule, the epithets 'natural, "ordinary", "literal", "grammatical" and "popular" are employed almost interchangeably to convey the same idea.

For determination of the meaning of any word or phrase in a statute, the first question is what is the natural and ordinary meaning of that word or phrase in its context in the statute but when that natural or ordinary meaning indicates such result which cannot be opposed to having been the intention of the legislature, then to look for other meaning of the word or phrase which may then convey the true intention of the legislature.

Another important point regarding the rule of literal construction is that exact meaning is preferred to loose meaning in an Act of Parliament. In the case of ***Pritipal Singh v. Union of India, AIR 1982 SC 1413*** it was held that there is a presumption that the words are used in an Act of Parliament correctly and exactly and not loosely and inexactly.

Rationale for this Rule

Proponents of the plain meaning rule claim that it prevents courts from taking sides in legislative or political issues. They also point out that ordinary people and lawyers do not have extensive access to secondary sources. In probate law the rule is also favored because the testator is typically not around to indicate what interpretation of a will is appropriate. Therefore, it is argued, extrinsic evidence should not be allowed to vary the words used by the testator or their meaning. It can help to provide for consistency in interpretation.

Criticism of this rule

Opponents of the plain meaning rule claim that the rule rests on the erroneous assumption that words have a fixed meaning. In fact, words are imprecise, leading justices to impose their own prejudices to determine the meaning of a statute. However, since little else is offered as an alternative discretion-confining theory, plain meaning survives.

This is the oldest of the rules of construction and is still used today, primarily because judges may not legislate. As there is always the danger that a particular interpretation may be the equivalent of making law, some judges prefer to adhere to the law's literal wording.

Q. Discuss the Mischief Rule and state the reason why is it often termed as 'Heydon's Rule'.

The mischief rule is a rule of statutory interpretation that attempts to determine the legislator's intention. Originating from a 16th-century case (Heydon's case) in the United Kingdom, its main aim is to determine the "mischief and defect" that the statute in question has set out to remedy, and what ruling would effectively

implement this remedy. When the material words are capable of bearing two or more constructions the most firmly established rule or construction of such words "of all statutes, in general, be they penal or beneficial, restrictive or enlarging of the common law is the rule of Heydon's case. The rules laid down, in this case, are also known as Purposive Construction or Mischief Rule.

The mischief rule is a certain rule that judges can apply in statutory interpretation in order to discover Parliament's intention. It essentially asks the question: By creating an Act of Parliament what was the "mischief" that the previous law did not cover?

Heydon's case

This was set out in ***Heydon's Case, [1584] 3 CO REP 7*** where it was stated that there were four points to be taken into consideration when interpreting a statute:

- What was the common law before the making of the act?
- What was the "mischief and defect" for which the common law did not provide?
- What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth?
- What is the true reason for the remedy?

The office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.

The application of this rule gives the judge more discretion than the literal and the golden rule as it allows him to effectively decide on Parliament's intent. It can be argued that this undermines Parliament's supremacy and is undemocratic as it takes lawmaking decisions away from the legislature.

Use of this Rule

This rule of construction is of narrower application than the golden rule or the plain meaning rule, in that it can only be used to interpret a statute and, strictly speaking, only when the statute was passed to remedy a defect in the common law. Legislative intent is determined by examining secondary sources, such as committee reports, treatises, law review articles and corresponding statutes. This rule has often been used to resolve ambiguities in cases in which the literal rule cannot be applied.

In the case of ***Thomson v. Lord*** Clan Morris, Lord Lindley M.R. stated that in interpreting any statutory enactment regard should not only be paid to the words used, but also to the history of the Act and the reasons which lead to its being passed.

In the case of **CIT v. Sundaradevi**, ***(1957) (32 ITR 615) (SC)*** it was held by the Apex Court that unless there is an ambiguity, it would not be open to the Court to depart from the normal rule of construction which is that the intention of the legislature should be primarily to gather from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and considered on surrounding circumstances and constitutionally proposed practices.

The Supreme Court in ***Bengal Immunity Co. v. State of Bihar, AIR 1995 SC 661***, applied the mischief rule in construction of Article 286 of the Constitution of India. After referring to the state of law prevailing in the province prior to the constitution as also to the chaos and confusion that was brought about in inter-state trade and commerce by indiscriminate exercise of taxing powers by the different Provincial Legislatures founded on the theory of territorial nexus, Chief Justice S.R. Das, stated "It was to cure this mischief of multiple taxation and to preserve the free flow of interstate trade or commerce in the Union of India regarded as one economic unit without any provincial barrier that the constitution maker adopted Article 286 in the constitution".

A principle to be valued must be capable of wider application than the mischief which gave it existence. These are designed to approach immortality as nearly as human institutions can approach it'. Mischief Rule is

applicable where language is capable of more than one meaning. It is the duty of the Court to make such construction of a statue which shall suppress the mischief and advance the remedy.

Advantages

- The Law Commission sees it as a far more satisfactory way of interpreting acts as opposed to the Golden or Literal rules.
- It usually avoids unjust or absurd results in sentencing.

Disadvantages

- It is considered to be out of date as it has been in use since the 16th century, when common law was the primary source of law and parliamentary supremacy was not established.
- It gives too much power to the unelected judiciary which is argued to be undemocratic.
- In the 16th century, the judiciary would often draft acts on behalf of the king and were therefore well qualified in what mischief the act was meant to remedy.
- It can make the law uncertain.

Q. Discuss the 'Golden Rule of Interpretation' with relevant case laws. Is it really so golden?

Golden Rule: This rule of statutory interpretation allows a shift from the ordinary sense of a word(s) if the overall content of the document demands it. This rule is a modification of the literal rule. It states that if the literal rule produces an absurdity, then the court should look for another meaning of the words to avoid that absurd result. The rule was evolved by Parke B (who later became **Lord Wensleydale**) in **Becke v Smith, 1836** and in **Grey v Pearson, 1857**, who stated, "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no farther."

It is a very useful rule in the construction of a statute as it allows to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case it allows the language to be varied or modified so as to avoid such inconvenience.

This rule may be used in **two ways**. It is applied most frequently in a narrow sense where there is some ambiguity or absurdity in the words themselves. For example, imagine there may be a sign saying "Do not use lifts in case of fire." Under the literal interpretation of this sign, people must never use the lifts, in case there is a fire. However, this would be an absurd result, as the intention of the person who made the sign is obviously to prevent people from using the lifts only if there is currently a fire nearby. This was illustrated in the case of **Lee vs Knapp 1967 QB** where the interpretation of the word "stop" was involved. Under Road Traffic Act, 1960, a person causing an accident "shall stop" after the accident. In this case, the driver stopped after causing the accident and then drove off. It was held that the literal interpretation of the word stop is absurd and that the requirement under the act was not fulfilled because the driver did not stop for a reasonable time so that interested parties can make inquiries from him about the accident.

The second use of the golden rule is in a wider sense, to avoid a result that is obnoxious to principles of public policy, even where words have only one meaning. **Bedford vs Bedford, 1935**, is another interesting case that highlighted the use of this rule. It concerned a case where a son murdered his mother and committed suicide. The courts were required to rule on who then inherited the estate, the mother's family, or the son's descendants. The mother had not made a will and under the Administration of Justice Act 1925 her estate would be inherited by her next of kin, i.e. her son. There was no ambiguity in the words of the Act, but the court was not prepared to let the son who had murdered his mother benefit from his crime. It was held that the literal rule should not apply and that the golden rule should be used to prevent the repugnant situation of the son inheriting. The court held that if the son inherits the estate that would amount to profiting from a crime and that would be repugnant to the act.

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Thus, the Golden rule implies that if a strict interpretation of a statute would lead to an absurd result then the meaning of the words should be so construed so as to lead to the avoidance of such absurdity. A further corollary to this rule is that in case there are multiple constructions to affect the Golden rule the one which favors the assessee should always be taken. This rule is also known as the Rule of **Reasonable Construction**.

Advantages

1. This rule prevents absurd results in some cases containing situations that are completely unimagined by the law makers.
2. It focuses on imparting justice instead of blindly enforcing the law.

Disadvantages

1. The golden rule provides no clear means to test the existence or extent of an absurdity. It seems to depend on the result of each individual case. Whilst the golden rule has the advantage of avoiding absurdities, it therefore has the disadvantage that no test exists to determine what is an absurdity.
2. This rule tends to let the judiciary overpower the legislature by applying its own standards of what is absurd and what it not.

Difficulties in the Application of Golden Rule

Lord Moulten in Vacher & Sons v. London Society of Compositor, (1913) AC 107 had explained the reasons for adopting caution before application of the golden rule of construction in these words: "There is a danger that it may generate into a mere judicial criticism of the propriety of the Acts of the legislature. We have to interpret statutes according to the language used therein, and though occasionally the respective consequences of two rival interpretations may guide us in our choice in between them, it can only be where, taking the Act as a whole and viewing it in connection with the existing state of law at the time of the passing of the Act, we can satisfy ourselves that the words cannot have been used in the sense the argument points.
"It may sometimes happen that laws made for the benefit of the public at large may come in the conflict of some individual interest or take away his legal right and cause injustice to him. That is to say, like public policy, absurdity, uncertainty or repugnance, are very unruly horses.

In ***State Bank of India v. Shri N. Sundara Money, (1913) AC 107*** the Supreme Court said that "it is the duty of all courts of justice, to take care for the general good of the community, that hard cases do not make bad law. Referring earlier cases, the court observed that absurdity should be understood in the same sense as repugnance that is to say something which would be as absurd with reference to the other words of the statute as to amount to repugnance

In ***Grundi v. Great Boulder Proprietary Cold Mines Ltd.***, ***1948 1 All ER 21*** Lord Greene M.R. said,
"Although absurdity or non-absurdity of one conclusion as capered with another may be and very often is, of assistance to the court in choosing between two possible meanings of ambiguous words. The Golden Rule of Construction is a doctrine, which must be applied with great care, remembering that judges may be fallible in this question of absurdity and in any event, it must not be applied so as to result in twisting language into a meaning, which it cannot bear. It is a doctrine which must not be used to re-write the language in a way different from that in which it was originally framed."

Conclusion: Court use it as a device to achieve a desired result, in this case as a very last resort and only after all less blatant methods have failed. In those rare cases where the words in question are (a) narrow and precise, and (b) too 'plain' to be judicially held not plain, and yet to hold them applicable would shock the court's sense of justice, the court will if it wishes to depart from their plain meaning, declare that to apply them literally to the facts of this case would result in an 'absurdity' of which the legislature could not be held guilty, and, invoking the 'golden rule,' will work out an implied exception. It was defined in ***Grey v. Pearson*** "the ordinary sense of the words is to be adhered to, unless it would lead to absurdity, when the ordinary sense may be modified to avoid the absurdity"

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Q. Discuss the rule of Interpretation of Remedial Statutes, Taxing Statutes and Penal Statutes.

Remedial Statutes

Remedial statutes and statutes which have come to be enacted on demand of the permanent public policy generally receive a liberal interpretation. On constructing a remedial statute, the courts ought to give to it 'the widest operation which its language will permit. They have only to see that the particular case is within the mischief to be remedied and falls within the language of the enactment.

The labour and welfare legislations should be broadly and liberally construed and while construing them due regard to the Directive Principles of State Policy (Part IV) and to any international convention on the subject must be given by the courts. ***In MC Mehta v. State of Tamil Nadu***, the Child Labour (Prohibition and Regulation) Act, 1986 was construed. The Court, having regard to the Directive Principles in Articles 39(e), 39(f), 4(i), 45 and 47 of the Constitution, the fundamental rights in Article 24, the International convention on the right of the child, not only directed a survey of child labour and its prohibition but also directed payment of Rs. 25,000 as contribution by the employer to the Child Labour-Rehabilitation cum- Welfare Fund or alternative employment to parent/guardian of the child to ameliorate poverty and lack of funds for welfare of the child which is the main cause of child labour.

In case of a social benefit-oriented legislation like the Consumer Protection Act 1986 the provisions of the consumer to achieve the purpose of the enactment but without doing violence to the language. If a section of a remedial statute is capable of two constructions, that construction should be preferred which furthers the policy of the Act and is more beneficial to those in whose interest the Act may have been passed. The liberal construction must flow from the language used and the rule does not permit placing of an unnatural interpretation on the words contained in the enactment nor does it permit the raising of any presumption that protection of widest amplitude must be deemed to have been conferred upon those for whose benefit the legislation may have been enacted.

In case there is any exception in the beneficial legislation which curtails its operation, the Court in case of doubt should construe it narrowly so as not to unduly expand the area or scope of exception. It has been held that a law enacted essentially to benefit a class of persons considered to be oppressed may be comprehensive in the sense that to some extent it benefits also those not within that class, for example, tenants and landlords. The Control of Rent and Eviction Acts which drastically limit the grounds on which a tenant can be evicted are essentially to benefit the tenants but they also to some extent benefit the landlord can file a suit for eviction on the grounds mentioned in the Acts even though the tenancy has not been terminated in accordance with the provisions of the Transfer of Property Act.

When contracts and transactions are prohibited by statutes for the sake of protecting one class of persons, the one from their situation and condition being liable to be oppressed and imposed upon by the other, the parties are not in pari delicto and a person belonging to the oppressed class can apply for redress even if he was a party to a contract or transaction prohibited by the statute.

In ***Noor Saba Khatoon v. Mohd Qasim***, it was held that effect of a beneficial legislation is not construed to be defeated by a subsequent legislation except through a clear provision. Therefore, the rights of the minor children, irrespective of their religion, to get maintenance from their parents as provided in § 127 of the Criminal Procedure Code 1973 was construed not to have been taken away in respect of Muslims by the Muslim Women (Protection of Rights on Divorce) Act 1986. § 3(b) of the Act enables a divorced Muslim woman to claim maintenance for the minor children up to the age of two years only from her former husband. It has been held that the right of children to claim maintenance under § 125 Cr PC is independent of the right of divorced mother to claim maintenance for the infant children and the former is not affected by the Muslim Women Act 1986.

(i) ***Sadhoo v. Haji Lal Mohd Biri Works***: In this case the Supreme Court interpreted § 31(2) (a) of the Beedi and Cigar Workers (Conditions of Employment) Act 1966. This § 31(2) (a) provides that the employees discharged, dismissed or retrenched may appeal to the prescribed authority. It was held that by the liberal construction of the section there need to be no written order of termination to enable the employee to appeal and that an

employee who was terminated by stopping him to enter the place of work could appeal to the prescribed authority.

(ii) ***Central Railway Workshop, Jhasi v. Vishwanath***: In this case the question before the court was wh ether time-keepers, who prepared pay sheet of the workshop staff, maintain leave account, dispose of settlement case and maintain records for other statistical purposes, were workers as defined in the Factories Act 1948. § 2 defined 'as a person employed directly or through any agency, whether for wages or not in any manufacturing process used for a manufacturing process or any other kind of work incidental to or connected with the manufacturing process.' The court gave a liberal construction to the definition of worker and held that time-keepers were workers being employed in a kind of work incidental to or connected with the manufacturing process.

(iii) ***Motor Owner's Insurance Co Ltd v. JK Modi:*** In this case, the words 'any one accident' occur ring in § 95(2) (a) of the Motor Vehicles Act 1939 was construed. Having regard to the beneficial purpose of the Act, the words were construed to signify as many accidents as the number of persons involved in the accident to enable the limit of Rs. 20,000 payables by the insurance company to apply to each person injured.

(iv) ***Kuldip Kaur v. Surinder Singh***: In this case the Supreme court de alt with § 125(3) of the Cr PC. This section provides for recovery of maintenance granted in favour of a wife or minor child by issue of a warrant if the order for maintenance is not complied with 'without sufficient cause' and enables the magistrate, if the amount still remains unpaid to sentence the person against whom the order is made to imprisonment for a period of one month. The court drew a distinction between 'mode of enforcement' and 'mode of satisfaction' and held that even after a sentences of imprisonment, the person concerned remained liable for arrests of maintenance for non-payment of which he was imprisoned and the liability for payment could be satisfied only by payment and not by suffering the sentence.

(v) ***Bhagirath v. Delhi Administration***: In this case the Supreme Court held that the beneficent provisions of § 428, Cr PC directing set-off of the period of pre-conviction detention against the 'term' of imprisonment is applicable even to cases where the sentence is imprisonment for life and that such a sentence is also imprisonment 'for a term' within the section.

PENAL STATUTES

The principle that a statute enacting an offence or imposing a penalty is to be strictly construed is not of universal application which must necessarily be observed in every case. It is now only of limited application and it serves in the selection of one when two or more constructions are reasonably open. The rule was originally evolved to mitigate the rigour of monstrous sentences for trivial offences and although that necessity and that strictness has now almost vanished, the difference in approach made to a penal statute as against any other statute still persists.

According to Lord Esher, the settled rule of construction of penal sections is that 'if there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable constructions, we must give the more lenient one.'

Interpretation of penal provisions must be in consonance with the principles underlying fundamental rights. Any provision which visits an accused with adverse consequences without affording him any remedy to disprove an item of evidence which stands against his innocence, is inconsistent with the philosophy enshrined in Art 21. It was held by the Supreme Court that they should so interpret such a provision as to dilute it to make it amenable to Art 21 of the Constitution.

When words employed in a penal statute are not clear the principle 'against double penalisation' would be applied. Failure to comply with a statute may attract penalty. But only because a statute attracts penalty for failure to comply with the statutory provisions, the same in all situations would not call for a strict construction. An interpretation which strikes a balance between enforcement of law and protection of valuable human right

of accused (right of privacy) must be resorted to. § 105 of the Evidence Act 1872 says that the burden to prove that the case of the accused falls within an exception to a statutory offence lies on him. But the question whether the defence set up by an accused is really a defence of an exception or a defence setting up non-existence of a fact which is an ingredient of the offence to be proved by the prosecution depends upon the construction of the particular statute.

In applying and interpreting a penal statute, public policy is also taken into consideration. In a recent case, the House of Lords held that consensual sadomasochistic homosexual encounters which occasioned actual bodily harm to the victim were assaults occasioning actual bodily harm, contrary to § 47 of the Offences Against the Person Act 1861 and unlawful wounding contrary to § 20 0f the Act, notwithstanding the victim's consent to the acts inflicted on him. The following are some of the propositions important in relation to strict construction of penal statutes:
(a) if the scope of prohibitory words covers only some class of persons or some well-defined activity, their scope cannot be extended to cover more on consideration of policy or object if the statute.
(b) prohibitory words can be widely construed only if indicated in the statute. On the other hand, if after full consideration no indication is found the benefit of construction will be given to the subject.
(c) if the prohibitory words in their own signification bear wider meaning which also fits in with the object or policy of the statute.

(i) ***JK (Bombay) Ltd v. Bharti Matha Mishra***: In this case, it was held that the expression 'officer or employee of a company' applies not only to the existing officer or employee but also includes past officers or employees where such an officer or employee either · wrongfully obtains possession of any property, or wrongfully withholds the same after the termination of his employment. The expression would also include the 'legal heirs or representatives.' It was held by the court that the penal statutes should not be so liberally construed with the aid of presumptions, assumptions and implications as to rope in for the purposes of prosecution such persons against whom the prosecution is not intended by the statute and initiation of prosecution would be violative of Art 21 of the Constitution and against public policy.

(ii) ***Municipal Corpn of Delhi v. Laxmi Narain Tondon:*** In this case, the definition of 'sale' in the Prevention of Food Adulteration Act 1954 was construed in the sense having regard to the mischief intended to be remedied. It was held that the 'sale' in the Act would include all commercial transactions where under an adulterated article of food was supplied for consumption by one person to another person. Therefore, supply or offer of food to hotelier to a customer when consolidated charge was made for residence and other amenities including food fell within the definition.

(iii) ***Tolaram v. State of Bombay:*** In this case, § 18 of the Bombay Rents, Hotels and Lodging Houses Rates (Control) Act 1947 was construed. This section provided that 'if any landlord receives any fine, premium or other like sum or deposit or any consideration other than the standard rent in respect of the grant, renewal or continuance of a lease of any premise, such landlord shall be punished.' It was held by the Supreme Court that the section did not prohibit the taking of money by owner of an incomplete building in consideration.

TAXING STATUTE

The adjudicating authority should always to follow the accepted and settled principles of interpretation of tax statutes and should not interpret the provisions to suit the revenue. Consideration of equity is wholly out of place in a taxing statute and only principle of strict interpretation applies to taxing statutes. The principle of strict interpretation of taxing statutes was best enunciated by Rowlatt J. in his classic statement:
"In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used, (***vide Cape Brady Syndicate v. IRC (1921) 1 KB 64 [cited with approval in AIR 1968 S.C. 623.]).***

In **A V Fernandez v. State of Kerala, AIR 1957 SC 657**, the Supreme Court of India stated the principle as follows:
"If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can

be taxed. If, on the other hand, the case is not covered within the four corners of the taxing statute, no tax can be imposed by inference or by analogy or by trying *to* probe into the intentions of the legislature and by considering what was the substance of the matter".

Hence in taxing statutes the language cannot be strained, vide ***State of Punjab v. Jullunder Vegetable Syndicate, AIR 1966 S.C. 1295***. If the words of a taxing statute fail, so must the tax. The courts cannot, except rarely and in clear cases, help the draftsman by a favourable construction, vide ***ITO v. Nadar, AIR 1968 S.C. 623***.

The Supreme Court of India has held that equity is out of place in tax laws, vide ***CIT v. Firm Muar, AIR 1965 S.C. 1216***. In ***CIT v. Madho Prasad Jatia, (1976) 4 SCC 92***, it held that there could be no consideration of equity if the language of the provision was plain and clear, but where it was not, and two interpretations were possible, the one in consonance with equity and fairness should be preferred.

In **Keshavji Ravji and Company v CIT 1990 -TMI - 5292 – (Supreme Court)**, it was observed that as long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the Legislature cannot then be appealed to whittle down the statutory language which is otherwise unambiguous. If the intendment is not in the words used it is nowhere else. The need for interpretation arises when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the Legislature.

'It has to be reiterated that the object of interpretation of a statute is to discover the intention of Parliament as expressed in the Act. The dominant purpose in construing a statute is to ascertain the intention of the Legislature as expressed in the statute, considering it as a whole and in its context. That intention, and therefore the meaning of — the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand**.'**

While interpreting a taxing statute, legal fiction should be kept in mind**.** It was held that having regard to the contextual interpretation and in view of the fact that the court is dealing with a taxation statute, the legal fiction must be construed having regard to the object it seeks to achieve. ***[Ishikawajima – Harima Heavy Industries Ltd. v. Director of Income Tax, Mumbai 2007 -TMI - 3467 – (Supreme Court)]***

It is also well settled that an agreement has to be read as a whole and the intention of the parties is to be gathered from it. Moreover, if the terms used in the agreements are not conclusive and one has to look at the substance rather than the form. In addition, it is equally well settled that a name given to a transaction by the parties does not necessarily decide the nature of the transaction. Thus, it is the substance of the contract that has to be regarded. (***Nilkantha Narayan Singh v. CIT 20 ITR 8***)

Conclusion: A statute may in certain aspects be a penal enactment and in certain others a remedial one. In respect of those provisions which are sanctioned on the pain of punishment for a crime the rule of strict construction in the limited sense may be applied. At any rate, as undue effort to construe such a provision liberally to promote the beneficent purpose behind it may be effectively counter balanced on consideration that a breach thereof leads to penal consequences.

Q. Explain the different parts of a statute with illustrations.

1. Title - The title of the statute is the heading on the preliminary part, furnishing the name by which the act is individually known.

These are of two types:

1. Short Title: It merely identifies the enactment.

2. Long Title: It describes the enactment.

For example, Prevention of Food Adulteration Act, 1954 is a short title and the long title is an Act to make provisions for the prevention of adulteration of food.

2. Preamble - That part of the statute explaining the reasons for its enactment and the objects sought to be accomplished. It is a key source to open the mind of interpreters. It expresses the scope and object of the Act in a comprehensive manner

3. Headings: They are prefixed to sections and treated as Preamble for the section and in case of ambiguity in the section; such headings can be looked into.

4. Enacting Clause - That part of the statute which declares its enactment and serves to identify it is an act of legislation proceeding from the proper legislative authority.

5. Body - The main and operative part of the statute containing its substantive and even procedural provisions. Provisos and exemptions may also be found in the body of the statute.

6. Repealing Clause - That part of the statute which announces the prior statutes or specific provisions which have been abrogated by reason of the new law.

7. Saving Clause - a restriction in a repealing act, which is intended to save rights, pending proceedings, penalties, etc., from the annihilation which would result from an unrestricted repeal.

8. Separability Clause - That part of the statute which provides that in the event that one or more provisions are declared void or unconstitutional, the remaining provisions shall still be in force and effect.

9. Effectivity Clause - That part of the Statute which announces the effective date

Q. Discuss the Rule of Harmonious Construction of Statute.

When there is a conflict between two or more statues or two or more parts of a statute then the rule of harmonious construction needs to be adopted. The rule follows a very simple premise that every statute has a purpose and intent as per law and should be read as a whole. The interpretation consistent of all the provisions of the statute should be adopted. In the case in which it shall be impossible to harmonize both the provisions, the court's decision regarding the provision shall prevail.

The rule of harmonious construction is the thumb rule to the interpretation of any statute. An interpretation which makes the enactment a consistent whole should be the aim of the Courts and a construction which avoids inconsistency or repugnancy between the various sections or parts of the statute should be adopted. The Courts should avoid "a head on clash", in the words of the Apex Court, between the different parts of an enactment and conflict between the various provisions should be sought to be harmonized. The normal presumption should be consistency and it should not be assumed that what is given with one hand by the legislature is sought to be taken away by the other**.** The rule of harmonious construction has been tersely explained by the Supreme Court thus, "When there are, in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted, that if possible, the effect should be given to both". A construction which makes one portion of the enactment a dead letter should be avoided since harmonization is not equivalent to destruction.

It is a settled rule that an interpretation which results in hardship, injustice, inconvenience or anomaly should be avoided and that which supports the sense of justice should be adopted. The Court leans in favour of an interpretation which conforms to justice and fair play and prevents injustice, ***Union of India v. B.S. Aggarwal (AIR 1998 S.C. 1537).***

When there are two provisions in a statute, which are in apparent conflict with each other, they should be interpreted such that effect can be given to both and that construction which renders either of them inoperative and useless should not be adopted except in the last resort.

This principle is illustrated in the case of ***Raj Krishna v. Binod, AIR 1954*.** In this case, two provisions of Representation of People Act, 1951, which were in apparent conflict, were brought forth. Section 33 (2) says that a Government Servant can nominate or second a person in election but section 123(8) says that a Government Servant cannot assist any candidate in election except by casting his vote. The Supreme Court observed that both these provisions should be harmoniously interpreted and held that a Government Servant was entitled to nominate or second a candidate seeking election in State Legislative assembly. This harmony can only be achieved if Section 123(8) is interpreted as giving the govt. servant the right to vote as well as to The courts must avoid a head on clash of nominate or second a candidate and forbidding him to assist the candidate in any other manner.

The important aspects of this principle are –

- The court must avoid a head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonize them.
- The provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its effort, is unable to find a way to reconcile their differences.
- When it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such as way so that effect is given to both the provisions as much as possible.
- Courts must also keep in mind that interpretation that reduces one provision to a useless number or a dead lumbar, is not harmonious construction.
- To harmonize is not to destroy any statutory provision or to render it loose.

Cases on Harmonious Construction

1. Venkataramana Devaru v. State of Mysore: In this case the Supreme Court applied the rule of harmonious construction in resolving a conflict between Articles 25(2)(b) and 26(b) of the Constitution and it was held that the right of every religious denomination or any section thereof to manage its own affairs in matters of religion [Article 26(b)] is subject to a law made by a State providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus [Article 25(2)(b)].

2. Calcutta Gas Company Pvt. Limited v State of West Bengal: The Legislative Assembly of WB passed the Oriental Gas Company Act in 1960. The respondent sought to take over the management of the Gas Company under this Act. The appellant challenged the validity of this act by holding that the state Legislative Assembly had no power to pass such an under Entries 24 and 25 of the State List because the Parliament had already enacted the Industries (Development and Regulation) Act, 1951 under Entry 52 of the Central List dealing with industries. It was observed by the Supreme Court that there are so many subjects in three lists in the Constitution that there is bound to be some overlapping and it is the duty of the courts in such situation is to yet to harmonise them, if possible, so the effect can be given to each of them. Entry 24 of the State List covers entire Industries in the State. Entry 25 is only limited to the Gas industry. Therefore Entry 24 covers every industry barring the Gas Industries because it has been specifically covered under Entry 25. Corresponding to Entry 24 of the State List, there is Entry 52 in the Union List. Therefore, by harmonious construction it became clear that gas industry was exclusively covered by Entry 25 of the State List over which the state has full control. Therefore, the state was fully competent to make laws in this regard.

3. Commissioner of Sales Tax, MP v Radha Krishna: Under Section 46 (1) c of the Madhya Pradesh General Sales Tax Act, 1958, criminal prosecution of the respondent partners was sanctioned in this case by the Commissioner when even after repeated demands the assessee did not pay the sales tax. The respondent challenged this provision on the ground that there were two separate provisions under the Act, namely, Section 22 (4 – A) and Section 46 (1) c under which two different procedures were prescribed to realize the amount due but there was no provision of law which could tell that which provision should be applied in which case. According to the Supreme Court, the provision prescribed u/s 46 (1) c was more drastic. It was held that by

harmonious construction of these two provisions, the conclusion drawn is that the Commissioner had a judicial discretion to decide as to which procedure to be followed in which case. Whenever the Commissioner will fail to act judicially, the court will have the right to intervene. However, in this case, the Commissioner had correctly decided that the more drastic procedure under section 46 (1) c deserved to be followed because of the failure of the assesse firm in paying sales tax despite the repeated demands by the sales tax officer.

Q. 'Statutes to be read as a whole' - Explain in a statute with judicial pronouncement.

Webster's New World Dictionary gives the meaning of the word 'interpretation' as 'the act or result of interpreting; explanation, meaning, translation, exposition etc.' and that of 'construction' as 'the act or process of constructing the way in which something is constructed; manner or method of building'. Lastly, Webster defines 'statutory' as fixed, authorized or established by statute.' Therefore, by statutory interpretation we mean explanation, meaning, translation or interpretation of statutes or enacted laws.

Statute must be read as a whole in its context

Whenever the question arises as to the meaning of a certain provision in a statute, it is proper and legitimate to read that provision in its context. This means that the statute must be read as a whole. What was the previous state of the law, study of other statutes in pari materia i.e., on the same matter, if there are any, what is the general scope of the statute and what is the mischief which it wanted to remedy, all these questions are to be considered here.

Lord Greene, M.R. said, 'To ascertain the meaning of a clause in a statute the courts must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself and the method of construing statutes that I prefer, is to read the statute as a whole and ask oneself the question: In this state, in this context, relating to this subject- matter, what is true meaning of that word?' In the words of Lord Halsbury, "I agree that you must look at the whole instrument in as much as there may be inaccuracy and inconsistency; you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it.' It is now firmly established as a rule that the intention of the Legislature must be found by reading the statute as a whole.

The conclusion that the language used by the legislature is plain or ambiguous can only be truly arrived at by studying the statute as a whole. Words take colour from the context in which they are used, keeping pace with the time. Words used as an adjective draws colour from the context too. The same word may mean one thing in one context and another in different context, therefore, the same word used in different sections of a statute or even when used at different places in the same clause or section of a statute may bear different meanings. That is why it is necessary to read the statute as a whole in its context.

Although the court would be justified to some extent in examining the materials for finding out the true legislative intent engrafted in a statute, but the same would be done only when the statute itself is ambiguous or a particular meaning given to a particular provision of the statute would make the statute unworkable or the very purpose of enacting the statute should get frustrated. But it is not open for a court to expand even the language used in the preamble to extract the meaning of the statute or to find out the latent intention of the legislature in enacting the statute.

While making contextual interpretation, the roots of the past, the foliage of the present and the seeds of the future cannot be lost sight of. Context quite often provides the key to the meaning of the word and the sense it should carry. Its setting would give colour to it and provide a cue to the intention of the legislature in using it. A word is not a crystal, transparent and unchanged. It is the skin of living thought and may vary greatly in colour and content according to the circumstance and the time in which the same is used. When a word or expression is not defined in an enactment, the courts apply the 'subject-and- object' rule to ascertain carefully the subject of the enactment where the word or expression occurs and have regard to the object, which the legislature has in view.

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In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words as no words or expressions used in any statute can be said to be redundant or superfluous. Every provision and every word must be looked at generally and in the context in which it is used and not in isolation. Every part of the provision has to be given meaning and effect in the context of the statute.

The Supreme Court in construing the word 'sale' in the Madras General Sales Tax Act, 1939 before its amendment in 1947, held that the definition of 'sale' as it then stood laid stress on the element of transfer of property and that the mere fact that the contract for sale was entered into within the province of Madras did not make the transaction, which was completed in another province, a sale taxable within the meaning of the Act. In arriving at that conclusion, the Supreme Court referred to the title, preamble, definition and other enacting provisions of the statute as also to the subsequent amendments made in the statute. B.K. Mukherjee J said, "It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose of the Act itself."

In **Jennings v. Kelly** it was held that the principle that the statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole whether or not one of the parts is a saving clause or a proviso. .

Conclusion: A statute cannot always be construed with the dictionary in one hand and statute in the other. **Regard must be had to the scheme, context and to the legislative history of the provision**. Every provision and every word must be looked at generally and in the context in which it is used and not in isolation. Every part of the provision has to be given meaning and effect in the context of the statute. Thus, the statute must be read as a whole in its context.

Q. 'Intention of the legislature is a common but slippery phrase' – (Watson). Explain the relevance of judicial interpretation of the intention of the legislature.

The legislative intent is more than the purpose of legislature and the implication of words while framing it. The purpose behind framing any statute is mainly for the public benefit (***United Bank of India, Culcutta v. Abhijit Tea Co. Pvt. Ltd., AIR 2000 SC 2957)***. The legislature is presumed to have certain meaning of the words of any particular statute. Any statute framed should be in accordance with such meaning. During any interpretation of any statute an advocate or a judge should always go by the rules of interpretation and all these rules are used to gather the facts and they are processed to clear the ambiguity and vagueness of the statute and will give a clear meaning to the word. The process of interpretation is done going by the words of these statutes which is open to more than one interpretation. In this case, the court will have to choose the intention of the legislature which is used in enacting a statute representing the true intention of the legislature ***(Venkataswami Naidu, R v. Narasarn Naraindas, AIR 1966 SC 361***). So, in this case, the court will look into the legal meaning or true meaning of all the statutory provisions.

<u>The role a Judiciary plays</u>

1. When words are imperfect and they are ambiguous and they keep changing meaning over time which does not appear to be directly addressing a particular issue and which appears to have a drafting error.
2. Some situations are inevitable and new technologies make existing laws difficult.
3. Some uncertainties can be added to the statute in course of enactment.
4. When any statute is clear and unambiguous, the courts stated that, the inquiry into legislative intents ends at that particular point. The intention of the legislature is to be construed when there is a possibility of two interpretations differently arising and this has to be essentially constructed of two aspects, one is the concept of meaning i.e. what the words mean and another is the words that state the concept of purpose and object or the reason and spirit coming through the statute.
5. The process of construction combines both literal and logical. The legislative intention is the true or legal meaning of an enactment which is derived by considering the meaning of words which is used in the enactment for a purpose or object to which the enactment is directed.

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6. The courts will have to keep in mind while reading any statute, by certain legislative intent. They are the text of any statute which has proposed to the legislature. These proposed amendments to the stature can be accepted or rejected with reasons. They include the record of court hearings on a particular topic. Parliamentary debates and speeches are made prior to the bill on vote. They maintain the legislative records or journals. The General Clauses Act, 1897 can be used to understand the relevant definitions in the statute.
7. Prior to the formation of statute, the case laws demonstrate the problems or issues which the legislative was dealing with tackling the problem. Legislative intent is the reason for passing the law.
8. Other relevant statutes which indicate the limits of the statute in question; such as previous statutes on the same matter.

The intention of legislature is a shorthand reference to the words meaning which is used by the Legislature and determined with guidance accepted principles of Interpretation. This interpretation is done by judges when the legislation was drafted because a statute is an edict of the Legislature. It is considered to be a reason that interpretation of a stature is done according to the intention of those persons who make it. It is the duty of the judicature to act upon the true intention of legislature – *the mens or sentential legis*. The main object of interpreting the statute is to ascertain the intention in which a legislature is made. The primary function of all the appellate courts is the interpretation of statures and it is also conventional for courts to make it use of the rules in the actual course of interpretation. Some of the rules in interpretation of law are considered to be very ancient and others are actually recent. Some statutes are applicable only to one field such as criminal law or constitutional law (***Vishnu Pratap Sugar Works (Pvt) Ltd. V. Chief Inspector of Stamp, AIR 1968 SC 102***).

Certain principles of interpretation are formulated by the Superior Courts to find out the intention of the legislature.
1. Literal construction: The first and foremost construction is that of a literal construction. The courts are bound by the legislature and once any legislature has expressed its intention in clear words they are binding. If any provision is unambiguous, the legislative intent is clear and the other rules of construction are not clear they need not be called for any aid. They will be aided only when the legislative intention is not clear. If the words are clear in a legislature, they should be applied even though their intention may be different or the result is harsh or undesirable.

2. No external aid where words plain and unambiguous: The words of a statute are unambiguous and precise, the intention of every legislature or statute is gathered from the language itself and no need of construction of any words. Where a statue is not exhaustive or it is ambiguous or uncertain the external aid may be looked into for the purpose of ascertaining the object for framing any statute in the legislature.

3. Mischief rule (Heydon's case): Whenever there arises any question as to determine any interpretation in an enactment, the court will have to ascertain the intention of making them and they must be gathered from the words used in the statute. The decision should not rest on a literal interpretation. Literal construction should have a prima facie preference. The rule gives more discretion than a literal or a golden rule of interpretation as it allows to effectively decide on parliament's intent.

4. Words coupled together to take colour from each other: This rule states that, when two or more words which have analogous meaning are coupled together, they are to be understood in proper sense and not in a wrong way. This rule will not apply in a case where the legislature has used more or wider words to widen the scope of any provision.

5. The golden rule: A hypothetical consideration should not have much weight in interpreting a statue. If the language permits, it is open to the court to give the statute any meaning which promotes the intent of legislation. The court will always have the power to depart from the construction if there is a strict adherence to the construction which will defeat the object of the legislature.

6. Absurdity or hardship: The court will have no power to give the language of a statue a meaning which is wider than the literal one, until there is any reason compelling to give another meaning. If an interpretation of

a statute has or leads to any absurdity or hardship then the construction may be put which modifies the meaning of the words and the sentence also. If the language which is to be constructed is plain, the legislature should step in and remove the absurdity. The considerations of the hardship should be ignored.

7. Liberal construction: It is necessary and legitimate to adopt the rule of liberal construction as to give a reason and meaning to all parts present in a statue and to make it effective and operative. The narrower and wider sense of a term is adopted and it depends on the provisions of the statute in which the term occurs depending on the various facts and circumstances of the case. If any words used in the provision are capable of only one construction, the doctrine of liberal construction cannot be of any help. The enactments related to procedures should be construed liberally in a manner as to render the enforcement of rights effective. This rule will apply to the interpretation of constitutional and statutory provision.

8. Harmonious construction: The statue should be construed and the construction has to be harmonious. The provisions which are in conflict with each other cannot stand together. They should be interpreted in a harmonious way and the effect should be given to both hand that a construction renders either of them inoperative. It is also the duty of the courts to avoid conflicts between the provisions and whenever it is possible the rule of harmonious construction applies and to different cognate acts such as the court fees or the civil procedure code. It can be unreasonable and illegitimate for a court to limit its scope arbitrarily or solely for the purpose of establishing harmony between them.

CONCLUSION: The usage of the intention of a legislature by every court should be justified by a proper reason and it should not be left open to statutes which are present. Errors are committed and should be rectified as soon as possible. Every court is assigned a task of statutory interpretation and that should always be done with a proper care and caution which is taking care of all the rules and regulations regarding the construction. The court can always interpret legislation in its own way as to what considers for them to be right and they are taken care for finding out the intention of legislature in enacting the statute.

There are different statutes where every intention can be looked upon on the case of 'Taxation' and 'Penal' statutes which is never looked by the court. The interpretation of all the statutes is different from ordinary ones as they have clear provisions as to what impose tax or liability on certain subjects. People will suffer if the interpretation goes in a wrong way. Both statutes should be clear for interpretation and if it is ambiguous or unclear, there will be no interpretation. In these statutes, the court will not give effect to all the word. They will only interpret if the word is clear and in the case of any ambiguity the court will look into enacting provisions of the statute. Here the court will apply only the Literal Interpretation by taking a popular or an ordinary meaning and the court will not apply any canon of construction for Interpretation of statute. Regarding law, every word has a meaning and the interpretation will become the scope and beyond the reach of objectives and reasons for which the statute was enacted in the legislature. Hence the court should understand this construction on for determining any statute or constitutional provision.

Q. What do you mean by Internal and External aids to construction? Discuss any two aids from each group.

INTERNAL AIDS

Laws enacted by the legislatures are interpreted by the judiciary. Enacted laws, specially the modern Acts and Rules, are drafted by legal experts and it could be expected that the language will leave little room for interpretation or construction. But the experience of all who have to hear and share the task of application of law, has been different. It is quite often observed that courts are busy unfolding the meaning of ambiguous words and expressions and resolving in consistencies. The age-old process of the application of the enacted laws has led to formulation of certain rules of interpretation or construction.

The object of interpretation of statutes is to determine the intention of the legislature conveyed expressly or impliedly in the language used. In ***Santi Swarup Sarkar v. Pradeep Kumar Sarkar***, the Supreme Court held that if two interpretations are possible of the same statute, the one which validates the statute must be preferred.

Broadly speaking, there are two kinds of interpretation:
1. Literal Interpretation
2. Logical Interpretation

Internal Aids of Interpretation are:

A. Long Title: It is now settled that Long Title of an Act is a part of the Act and is admissible as an aid to its construction. The long title which often precedes the preamble must be distinguished with the short title; the former taken along with the preamble or even in its absence is a good guide regarding the object, scope or purpose of the Act, whereas the latter 341 being only an abbreviation for purposes of reference is not a useful aid to construction.

B. Preamble: The preamble of a statute like the long title is a part of the Act and is an admissible aid to construction. Although not an enacting part, the preamble is expected to express the scope, object and purpose of the Act more comprehensively than the long title. It may recite the ground and cause of making the statute, the evils sought to be remedied or the doubts which may be intended to be settled. In the words of Sir John Nicholl : It is to the preamble more specifically that we are to look for the reason or spirit of every statute, rehearsing this, as it ordinarily does, the evils sought to be remedied, or the doubts purported to be removed by the statute, and so evidencing, in the best and most satisfactory manner, the object or intention of the Legislature in making or passing the statute itself.

C. Preamble to Constitution: The Preamble of the Constitution like the Preamble of any statute furnishes the key to open the mind of the makers of the Constitution more so because the Constituent Assembly took great pains in formulating it so that it may reflect the essential features and basic objectives of the Constitution. The Preamble is a part of the Constitution The Preamble embodies the fundamentals underlining the structure of the Constitution. It was adopted by the Constituent Assembly after the entire Constitution has been adopted.

The true functions of the Preamble is to expound the nature and extend and application of the powers actually confirmed by the Constitution and not substantially to create them. The Constitution, including the Preamble, must be read as a whole and in case of doubt interpreted consistent with its basic structure to promote the great objectives stated in the preamble. But the Preamble can neither be regarded as the source of any substantive power nor as a source of any prohibition or limitation.

D. Headings: The view is now settled that the Headings or Titles prefixed to sections or group of sections can be referred to in construing an Act of the Legislature. But conflicting opinions have been expressed on the question as to what weight should be attached to the headings. A Heading• , according to one view, is to be regarded as giving the key to the interpretation of the clauses ranged under it, unless the wording is inconsistent with such interpretation; and so the headings might be treated as preambles to the provisions following them.

E. Marginal Notes: In the older statutes marginal notes were not inserted by the legislature and hence were not part of the statute and could not be referred to for the purpose of construing the statute. If they are also enacted by the legislature they can be referred to for the purpose of interpretation. In the case of the Indian Constitution, the marginal notes have been enacted by the Constituent Assembly and hence they may be referred to for interpreting the Articles of the Constitution. If the words used in the enactment are clear and unambiguous, the marginal note cannot control the meaning, but in case of ambiguity or doubt, the marginal note may be referred to.

F. Punctuation: Punctuation means to mark with points and to make points with usual stops. It is the art of dividing sentences by point or mark. Is the Court entitled to use punctuation also while interpreting the statutes? Punctuation is considered as a minor element in the construction of statutes.

G. Illustrations: Illustrations appended to a section from part of the statute and although forming no part of the section, are of relevance and value in the construction of the text of the section and they should not be

readily rejected as repugnant to the section. It would be the very last resort of construction to make this assumption. The great usefulness of the Illustrations which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired.

H. Definition Section: These do not take away the ordinary and natural meaning of the words, but as used: (i) to extend the meaning of a word to include or cover something, which would not normally be covered or included; and (ii) to interpret ambiguous words and words which are not plain or clear.

I. Proviso: The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. Normally, a proviso does not travel beyond the provision to which it is a proviso. It craves out an exception to the main provision to which it has been enacted as a proviso and to no other.

J. Explanation: The object of an Explanation to a statutory provision is –

1. To explanation the meaning and intendment of the Act itself,
2. Where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to sub serve,
3. To provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,
4. An Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpreting the true purport and intendment of the enactment, and
5. It cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming a hindrance in the interpretation of the same.

EXTERNAL AIDS

When internal aids are not adequate, court has to take recourse to External aids. External Aids may be parliamentary material, historical background, reports of a committee or a commission, official statement, dictionary meanings, foreign decisions, etc. In ***Prabhakar Rao and others v. State of A.P. and others, AIR 1986 SC 120,*** O. Chennappa, Reddy J. has observed: Where internal aids are not forthcoming, we can always have recourse to external aids to discover the object of the legislation. External aids are not ruled out. This is now a well settled principle of modern statutory construction.

A. Parliamentary History, Historical Facts and Surrounding Circumstances: Historical setting cannot be used as an aid if the words are plain and clear. If the wordings are ambiguous, the historical setting may be considered in order to arrive at the proper construction. Historical setting covers parliamentary history, historical facts, statement of objects and reasons, report of expert committees. Recently, the Supreme Court in ***R. Chaudhuri v State of Punjab and others, (2001) 7 SCC 126,*** has stated that it is a settled position that debates in the Constituent Assembly may be relied upon as an aid to interpret a Constitutional provision because it is the function of the Court to find out the intention of the framers of the Constitution.

B. Social, Political and Economic Developments and Scientific Inventions: A Statute must be interpreted to include circumstances or situations which were unknown or did not exist at the time of enactment of the statute. Any relevant changes in the social conditions and technology should be given due weightage. Courts should take into account all these developments while construing statutory provisions.

In ***P. Gupta v. Union of India, AIR 1982 SC 149,*** it was stated – The interpretation of every statutory provision must keep pace with changing concepts and values and it must, to the extent to which its language permits or

rather does not prohibit, suffer adjustments through judicial interpretation so as to accord with the requirement of the fast changing society which is undergoing rapid social and economic transformation.

C. Reference to Other Statutes: In case where two Acts have to be read together, then each part of every act has to be construed as if contained in one composite Act. However, if there is some clear discrepancy then the latter Act would modify the earlier. Where a single provision of one Act has to be read or added in another, then it has to be read in the sense in which it was originally construed in the first Act. In this way the whole of the first Act can be mentioned or referred in the second Act even though only a provision of the first one was adopted.

In case where an old Act has been repealed, it loses its operative force. Nevertheless, such a repealed part may still be taken into account for construing the unrepealed part. For the purpose of interpretation or construction of a statutory provision, courts can refer to or can take help of other statutes. It is also known as statutory aids. The General Clauses Act, 1897 is an example of statutory aid. The application of this rule of construction has the merit of avoiding any contradiction between a series of statutes dealing with the same subject, it allows the use of an earlier statute to throw light on the meaning of a phrase used in a later statute in the same context.

On the same logic when words in an earlier statute have received an authoritative exposition by a superior court, use of same words in similar context in a later statute will give rise to a presumption that the legislature intends that the same interpretation should be followed for construction of those words in the later statute.

D. Dictionaries: When a word is not defined in the statute itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in the selection of one out of the various meanings of a word, regard must always be had to the scheme, context and legislative history.

E. Judicial Decisions: When judicial pronouncements are been taken as reference it should be taken into note that the decisions referred are Indian, if they are foreign it should be ensured that such a foreign country follows the same system of jurisprudence as ours and that these decisions have been taken in the ground of the same law as ours. These foreign decisions have persuasive value only and are not binding on Indian courts and where guidance is available from binding Indian decisions; reference to foreign decisions is of no use.

F. Other Materials: Similarly, Supreme Court used information available on internet for the purpose of interpretation of statutory provision in ***Ramlal v. State of Rajasthan, (2001) 1 SCC 175***. Courts also refer passages and materials from text books and articles and papers published in the journals. These external aids are very useful tools not only for the proper and correct interpretation or construction of statutory provision, but also for understanding the object of the statute, the mischief sought to be remedied by it, circumstances in which it was enacted and many other relevant matters. In the absence of the admissibility of these external aids, sometimes court may not be in a position to do justice in a case.

Q. Explain the 'Operation of a Statute'.

Statutes are either prospective or both prospective and retrospective from the point of its applicability i.e. the period of legal effect of statutes. All statutes in general have only prospective effect. It means applicability to future transactions. But certain statutes have to be sometimes both prospective and retrospective. “Retrospective” means the statute would apply and affect past transaction also.

Commencement: The term “commencement” is used with reference to an Act, the day on which the Act comes into force. If not provided, a Central Act comes into force on the day it receives Presidential assent.

Retrospective: Retrospective statute contemplates the past and gives effect to previous transactions. There must be words in a statute sufficient to show that the intention of the legislature is to give the rule or the law the Retrospective effect.

Relevant considerations relating to Operation

General Statute: Every statute is prima facie prospective, unless it is expressed or implied. If the object of the statute is to affect vested rights or to impose mew burdens or to impair existing obligations, then there must be words in the statute sufficient to show the intention of the legislature. A statute can be given retrospective effect, only if the statute so directs either expressly or by necessary implications. It is a fundamental rule of the law that no statute shall be construed to have retrospective operation unless such construction appears very clearly in terms of the Act, or arises by necessary or distinct implication. Conditions for giving retrospective effect Minute attention must be given to the language of the statutory provision for determining the scope of the retrospection as intended by the Parliament. The language used in a statute is the most important factor to be considered.

Amending statute: An amendment of a substantive law is not retrospective unless laid down or necessarily implied. A vested right cannot be taken away by amending Act except by express language or by necessary intendment.

Declaratory statute: A declaratory Act is defined as an Act to remove doubts existing as to the common law, or the meaning or the effect of any statute. The usual reason for the passing a declaratory act is to set aside what Parliament has considered a judicial error, whether in the statement of the common law or the interpretation of the statute. The presumption against retrospective operation is not applicable to the declaratory statutes. A declaratory act is an act to remove doubts existing to common law and thus declaratory acts are usually held retrospective.

Pending Actions In the pending suits or actions, the law is that the rights of the parties are decided as per the law as it existed when the action was commenced. If, however the Act provides the retrospective operation of a statute, it would be construed accordingly even though the consequences are unjust and hard. In **Smith v. National Association of Operative Plasterers**. Section 4 of the trade dispute act,1906 enacted that "an action for tort against a trade union shall not be entertained by any court". It was held not to affect decisions of an action commenced before passing of the act.

Doctrines of prospective overruling Rule in I.C Golaknath v. State of Punjab

The doctrine of prospective overruling is a modern doctrine suitable for a fast-moving society. It does not affect the past but restricts its scope for the future. Under this doctrine, the court declares what the law is but does not give retrospectively. It reconciles the two conflicting doctrines, namely, the Court finds law and that it makes a law for the future by bringing about a smooth transition by correcting the errors in the law without disturbing the impact of errors on the past transactions. In other words, the law for the future corrected and the past transaction as per the law, though invalid, are held valid. The doctrine of prospective overruling can be invoked only regarding constitutional matters. It can be applied only by the Supreme Court.

De Facto Acts: The acts performed by the officers de facto within their assumed official authority, provided such acts are performed in the interest of the public or the third party and not for their own benefits, are generally held as valid and binding, as if they were acts of officers de jure.

General Act and Special Act: The general rule is that special Acts prevails over the general act in the case of inconsistency. A general act cannot repeal a special act. A Special Act, though earlier in time, deals with special objects and general law even if enacted later cannot repeal it. ***Food Inspector v. Suivert and Dholakia Pvt. ltd***. If there is a general law and a special law relating to a particular subject, the general law must be so applied as

to not to affect the special provision. Only if the intention to abrogate the special law can be spelled out, the general law shall prevail.

Statutes dealing with merely matters of procedure are presumed to be retrospective unless otherwise interrupted. Statutes Regulating Succession Statutes enacted for regulating succession are not applicable to already open succession. Such laws have only prospective effect. It is the same regarding statutes regulating transfers and contracts. Fiscal and Penal Statutes are prospective Statutes regulating appeals and finality of orders are also prospective.

Q. Discuss in brief, the different rules of interpretation of Constitution with case laws.
Introduction: The letters of the constitution are fairly static and not very easy to change but the laws enacted by the legislature reflect the current state of people and are very dynamic. To ensure that the new laws are consistent with the basic structure of the constitution, the constitution must be interpreted in a broad and liberal manner giving effect to all its parts and the presumption must be that no conflict or repugnancy was intended by its framers. Applying the same logic, the provisions relating to fundamental rights have been interpreted broadly and liberally in favor of the subject. Similarly, various legislative entries mentioned in the Union, State, and Concurrent list have been construed liberally and widely. There are basically three types of interpretation of the constitution.

Historical interpretation: Ambiguities and uncertainties while interpreting the constitutional provisions can be clarified by referring to earlier interpretative decisions.

Contemporary interpretation: The Constitution must be interpreted in the light of the present scenario. The situation and circumstances prevalent today must be considered.

Harmonious Construction: It is a cardinal rule of construction that when there are in a statute two provisions which are in such conflict with each other, that both of them cannot stand together, they should possibly be so interpreted that effect can be given to both. And that a construction which renders either of them inoperative and useless should not be adopted except in the last resort.

The Supreme Court held in ***Re Kerala Education Bill, 1959 1 SCR 995*** that in deciding the fundamental rights, the court must consider the directive principles and adopt the principle of harmonious construction so two possibilities are given effect as much as possible by striking a balance.

In ***Qureshi v. State of Bihar, 1958 AIR 731,*** The Supreme Court held that while the state should implement the directive principles, it should be done in such a way so as not to violate the fundamental rights.

In ***Bhatia International v Bulk trading SA, (2003) 5 SCC (Jour) 22,*** it was held that if more than one interpretation is possible for a statute, then the court has to choose the interpretation which depicts the intention of the legislature.

<u>Interpretation of the preamble of the Constitution</u>
The preamble cannot override the provisions of the constitution. In ***Re Berubari, AIR 1960 SC 845,*** the Supreme Court held that the Preamble was not a part of the constitution and therefore it could not be regarded as a source of any substantive power.

In ***Keshavananda Bharati's case, AIR 1973 SC 1461,*** the Supreme Court rejected the above view and held the preamble to be a part of the constitution. The constitution must be read in the light of the preamble. The

preamble could be used for the amendment power of the parliament under Art.368 but basic elements cannot be amended. The 42 Amendment has inserted the words "Secularism, Socialism, and Integrity" in the preamble.

General rules of interpretation of the Constitution

1. If the words are clear and unambiguous, they must be given the full effect.
2. The constitution must be read as a whole.
3. Principles of harmonious construction must be applied.
4. The Constitution must be interpreted in a broad and literal sense.
5. The court has to infer the spirit of the Constitution from the language.
6. Internal and External aids may be used while interpreting.
7. The Constitution prevails over other statutes.

Principles of Constitutional Interpretation

The following principles have frequently been discussed by the courts while interpreting the Constitution:

1. Principle of colourable legislation
2. Principle of pith and substance
3. Principle of eclipse
4. Principle of Severability
5. Principle of territorial nexus
6. Principle of implied powers

Principle of Colourable Legislation

The doctrine of colourability is the idea that when the legislature wants to do something that it cannot do within the constraints of the constitution, it colours the law with a substitute purpose which will still allow it to accomplish its original goal.

Maxim: "Quando aliquid prohibetur ex directo, prohibetur et per obliqum" which means what cannot be done directly cannot also be done indirectly.

The rule relates to the question of legislative competence to enact a law. Colourable Legislation does not involve the question of bonafides or malafides. A legislative transgression may be patent, manifest or direct or may be disguised, covert or indirect. It is also applied to the fraud of Constitution.

In India 'the doctrine of colourable legislation' signifies only a limitation of the law-making power of the legislature. It comes into picture while the legislature purporting to act within its power but in reality, it has transgressed those powers. So the doctrine becomes applicable whenever legislation seeks to do in an indirect manner what it cannot do directly. If the impugned legislation falls within the competence of legislature, the question of doing something indirectly which cannot be done directly does not arise.

In our Constitution, this doctrine is usually applied to Article 246 which has demarcated the Legislative competence of the Parliament and the State Legislative Assemblies by outlining the different subjects under list I for the Union, List II for the States and List III for the both as mentioned in the seventh schedule.

This doctrine comes into play when a legislature does not possess the power to make law upon a particular subject but nonetheless indirectly makes one. By applying this principle, the fate of the Impugned Legislation is decided.

One of the most cogent and lucid explanations relating to this doctrine was given in the case of ***K.C. Gajapati Narayana Deo and Other v. The State of Orissa, AIR 1953 SC 375:*** *"If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental*

rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers.

Summing up the doctrine, Subha Rao, J. has stated in ***Gullapalli Nageshwar Rao vs. State Road Transport Corporation, AIR 1959 S.C. 308***, "*The legislature can only make laws within its legislative competency. The legislative field is circumscribed by the scheme of distribution of powers. The legislature cannot overstep the field of competency, directly or indirectly. The court will scrutinise to ascertain whether the legislature by device purports to make a law which though in forms appears to be within its sphere in effect or substance, reaches beyond it*."

Principle of pith and substance

Pith means 'true nature' or essence of something' and substance means 'the most important or essential part of something'. The basic purpose of this doctrine is to determine under which head of power or field i.e. under which list (given in the seventh schedule) a given piece of legislation falls.

Union & State Legislatures are supreme within their respective fields. They should not encroach/ trespass into the field reserved to the other. If a law passed by one trespass upon the field assigned to the other—the Court by applying Pith & Substance doctrine, resolve the difficulty &declare whether the legislature concerned was competent to make the law.

If the pith & substance of the law (i.e. the true object of the legislation) relates to a matter within the competence of the legislature which enacted it, it should be held intra vires—though the legislature might incidentally trespass into matters, not within its competence. The true character of the legislation can be ascertained by having regard—to the enactment as a whole — to its object – to the scope and effect of its provisions.

State of Bombay v. FN Balsara, AIR 1951 SC 318

Bombay Prohibition Act, 1949 which prohibited sale & possession of liquors in the State, was challenged on the ground that it incidentally encroached upon Imports & Exports of liquors across custom frontier – a Central subject. It was contended that the prohibition, purchase, use, possession, and sale of liquor will affect its import. The court held that act valid because the pith & substance fell under Entry 8 of State List and not under Entry 41 of Union List.

Principle of eclipse

The Doctrine of Eclipse says that any law inconsistent with Fundamental Rights is not invalid. It is not dead totally but overshadowed by the fundamental right. The inconsistency (conflict) can be removed by a constitutional amendment to the relevant fundamental right so that eclipse vanishes and the entire law becomes valid.

All laws in force in India before the commencement of the Constitution shall be void in so far they are inconsistent with the provisions of the Constitution. Any law existing before the commencement of the Constitution and inconsistent with the provision of Constitution becomes inoperative on commencement of Constitution. But the law does not become dead. The law remains a valid law in order to determine any question of law incurred before the commencement of the Constitution. An existing law only becomes eclipsed to the extent it comes under the shadow of the FR.

Keshavan Madhava Menon v. The State of Bombay, [1961] S.C.R. 288

In this case, the law in question was an **existing law** at the time when the Constitution came into force. That existing law imposed on the exercise of the right guaranteed to the citizens of India by article 19(1)(g) restrictions which could not be justified as reasonable under clause (6) **as it then stood** and consequently under article 13(1) that **existing law** became void "**to the extent of such inconsistency**".

The court said that the law became void not in to or for all purposes or for all times or for all persons but only "**to the extent of such inconsistency**", that is to say, **to the extent it became inconsistent with the provisions of Part III which conferred the fundamental rights of the citizens**.

Thus, the Doctrine of Eclipse provides for the validation of Pre-Constitution Laws that violate fundamental rights upon the premise that such laws are not null and void ab initio but become unenforceable only to the extent of such inconsistency with the fundamental rights. If any subsequent amendment to the Constitution removes the inconsistency or the conflict of the existing law with the fundamental rights, then the Eclipse vanishes and that particular law again becomes active again.

Principle of Severability

The doctrine of severability provides that if an enactment cannot be saved by construing it consistent with its constitutionality, it may be seen whether it can be partly saved. Article 13 of the Constitution of India provides for Doctrine of severability which states that-

All laws in force in India before the commencement of Constitution shall be void in so far, they are inconsistent with the provisions of the Constitution.

The State shall not make any law which takes away/ shortens the rights conferred by Part III of the Constitution i.e. Fundamental Rights. Any law made in contravention of the provisions of the Constitution shall be void and invalid. The invalid part shall be severed and declared invalid if it is really severable. (That is, if the part which is not severed can meaningfully exist without the severed part.) Sometimes the valid and invalid parts of the Act are so mixed up that they cannot be separated from each other. In such cases, the entire Act will be invalid.

AK Gopalan v. State of Madras, AIR 1950 SC 27

In this case, the Supreme Court said that in case of repugnancy to the Constitution, only the repugnant provision of the impugned Act will be void and not the whole of it, and every attempt should be made to save as much as possible of the Act. If the omission of the invalid part will not change the nature or the structure of the object of the legislature, it is severable. It was held that except Section 14 all other sections of the Preventive Detention Act, 1950 were valid, and since Section 14 could be severed from the rest of the Act, the detention of the petitioner was not illegal.

Principle of Territorial Nexus

Article 245 (2) of the Constitution of India makes it amply clear that 'No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation'. Thus, a legislation cannot be questioned on the ground that it has extra-territorial operation. It is well-established that the Courts of our country must enforce the law with the machinery available to them, and they are not entitled to question the authority of the Legislature in making a law which is extra-territorial. The extra-territorial operation does not invalidate a law. But some nexus with India may still be necessary in some of the cases such as those involving taxation statutes.

The Doctrine of Territorial Nexus can be invoked under the following circumstances-

- Whether a particular state has extra-territorial operation.
- If there is a territorial nexus between the subject- matter of the Act and the state making the law

It signifies that the object to which the law applies need not be physically located within the territorial boundaries of the state, but must have a sufficient territorial connection with the state. A state may levy a tax on a person, property, object or transaction not only when it is situated within its territorial limits, but also when it has a sufficient and real territorial connection with it. Nexus test was applied to the state legislation also

Tata Iron & Steel Company v. Bihar State, AIR 1958 SC 482

The State of Bihar passed a Sales Tax Act for levy of sales tax whether the sale was concluded within the state or outside if the goods were produced, found and manufactured in the state. The court held there was sufficient territorial nexus and upheld the Act as valid. Whether there is sufficient nexus between the law and the object sought to be taxed will depend upon the facts and circumstances of a particular case.

It was pointed out that sufficiency of the territorial connection involved a consideration of two elements- a) the connection must be real and not illusory b) the liability sought to be imposed must be pertinent to that connection.

Principle of Implied powers

Laws which are necessary and proper for the execution of the power or incidental to such power are called implied powers and these laws are presumed to be constitutional. In other words, constitutional powers are granted in general terms out of which implied powers must necessarily arise. Likewise, constitutional restraints are put in general terms out of which implied restraints must also necessarily establish. This is a Legal principle which states that, in general, the rights and duties of a legislative body or organization are determined from its functions and purposes as specified in its constitution or charter and developed in practice.

Conclusion: The Constitution is the supreme and fundamental law of our country. Since it is written in the form of a statute, the general principles of statutory interpretation are applicable to the interpretation of the constitution as well. It is important to note that the constitution itself endorses the general principles of interpretation through **Article 367(1)**, which states that unless the context otherwise requires, the General Clauses Act, 1897 shall apply for the interpretation of this constitution as it applies to the interpretation of an act of the legislature.

Q. Explain:

(a) Noscitur a Sociis

The principle of **Noscitur a Sociis** is a rule of construction. It is one of the rules of language used by court to interpret legislation. This means that, the meaning of an unclear word or phrase should be determined by the words immediately surrounding it. In other words, the meaning of a word is to be judged by the company it keeps. The questionable meaning of a doubtful word can be derived from its association with other words. It can be used wherever a statutory provision contains a word or phrase that is capable of bearing more than one meaning.

This rule is explained in Maxwell on the interpretation of statutes (12th edition) in following words – When two or more words susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. The words take their colour from and are quantified by each other, the meaning of the general words being restricted to a sense analogous to that of the less general.

Relying on the above, in the case of ***Commissioner of Income Tax v. Bharti cellular*** it was held that term 'technical services' used in Section 194J of the Income Tax Act is unclear. The word technical would take colour from the words managerial & consultancy between which it is sandwiched. These terms 'managerial services' & 'consultancy services' necessarily involve a human intervention. So, applying **noscitur a sociis** the word 'technical' would also have to be construed as involving a human element. Thus, interconnection & port access services rendered by the assessee do not involve any human interface & therefore cannot be regarded as technical services u/s 194J of the Income Tax Act.

Coupling of word together shows that they are to be understood in the same sense and where the meaning of particular word is doubtful or obscure or where a particular expression when taken singly is inoperative, its intention is to be ascertained by looking at adjoining words or at expressions occurring at other parts of the same instrument.

If one could pick out a single word or phrase & finding it perfectly clear in itself, refuse to check its apparent meaning, in the light thrown upon it by the context or by other provisions then the principle of **noscitur a sociis** would be utterly meaningless. This principle requires that a word or phrase or even a whole provision which standing alone has a clear meaning, must be given quite a different meaning when viewed in the light of its context.

The apex court in ***Pradeep Agarbatti*** with reference to the Punjab Sales Tax Act held that the word, "perfumery'' means such articles as used in cosmetics and toilet goods viz, sprays, etc but does not include 'Dhoop' and 'Agarbatti'. This is because in Schedule 'A' Entry 16 of Punjab Sales Tax Act reads as "cosmetics, perfumery & toilet goods excluding toothpaste, tooth powder kumkum & soap."

Delhi Tribunal in the case of, ***Parsons Brinckerhoff India (P.) Ltd. vs. Assistant DIT (Int. Tax)*** applying the rule of **Noscitur a Sociis** held that, the words 'model' and 'design' cannot fall under definition of 'royalty' under Explanation 2 to section 9 (I) (VI) of the Income Tax Act. They have to take colour from the other words surrounding them, such as, patent, invention, secret formula or process or trade mark, which are all species of intellectual property.

Noscitur a sociis cannot prevail in case where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It can also be applied where the meaning of the words of wider meaning import is doubtful; but, where the object of the Legislature in using wider words is clear and free from ambiguity, the rule of construction cannot be applied.

(b) Ejusdem Generis

According to the **Black's Law Dictionary (8th edition, 2004)** the principle of **Ejusdem Generis** is where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. It is a canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.

The expression Ejusdem Generis means of the same kind. Normally, general words should be given their natural meaning like all other words unless the context requires otherwise. But when a general word follows specific words of a distinct category, the general word may be given a restricted meaning of the same category. **The general expression takes it's meaning from the preceding particular expressions because the legislature by using the particular words of a distinct genus has shown its intention to that effect.** This principle is limited in its application to general word following less general word only. If the specific words do not belong to a distinct. Genus, this rule is inapplicable. Consequently, if a general word follows only one particular word, that single particular word does not constitute a distinct genus and, therefore, Ejusdem Generis rule cannot be applied in such a case.

Exceptional stray instances are, however, available where one-word genus has been created by the courts and the general word following such a genus given a restricted meaning. If the particular words exhaust the whole genus, the general word following these particular words is construed as embracing a larger genus. **The principle of Ejusdem Generis is not a universal application.** If the context of legislation rules out the applicability of this rule, it has no part to play in the interpretation of general words. The basis of the principle of Ejusdem Generis is that if the legislature intended general words to be used in unrestricted sense, it would not have bothered to use particular words at all.

(C) Generalia Specialibus Non Derogant

The maxim *generalia specialibus non derogant* means general words do not derogate from special provisions, or special provisions will control general provisions.

In ***Corporation of Madras v. Electric Tramways Ltd. TLR 54 Mad 364*** it is observed that if the Legislature makes a special Act dealing with a particular case and later makes a general Act, which by its terms would include the subject of the special Act and is in conflict with the special Act, nevertheless unless it is clear that in making the general Act, the Legislature has/had the Special Act in its mind and has intended to abrogate it, the provisions of the general Act do not override the special Act. If the special Act is made after the general Act, the position is even simpler. Having made the general Act if the Legislature afterwards makes a Special Act in conflict with it, we must assume that the Legislature had in mind its own general Act when it made the special Act which is in conflict with the general Act, as an exception to the general Act.

In case of apparent conflict between two independent provisions of law, the special provision must prevail as observed in ***Union of India Fisheries (P) Ltd. (1965) 57 ITR 331 (SC)***. Thus, a general provision cannot derogate from a special provision. Vide ***Lloyd Helicopters International Pty Ltd., In re. (2001) 249 ITR 162, 176 (AAR)***. A general Act would not prevail over the special Act or general provision should yield to special provision. Vide ***Allahabad Bank v. Canara Bank (2000) 4 SCC 406, 426, Gobind Sugar Mills Ltd. v. State of Bihar (1999) 7 SCC 76, 82***.

(d) Mutatis Mutandis

Mutatis mutandis is a Latin phrase that means **"by changing those things which need to be changed."** The phrase can also mean **"having substituted new terms."** Mutatis mutandis relates to due alterations to be made in similar statements.

For example, the phrase can be used in contract clauses such as, "The changes proposed for the first contract apply mutatis mutandis to all other contracts."

Mutatis mutandis is used to gain a reader's attention to differences between a statement and a similar but different earlier statement. This phrase refers to matters that are generally same but can be altered according to need. Changes in similar statements will be regarding points in detail such as the name, title, and address of the parties.

(e) Ut Res Magis Valeat Quam Pereat:

The maxim "Ut Res Magis Valeat Quam Pereat" is a rule of construction which literally means the construction of a rule should give effect to the rule rather than destroying it .i.e., **when there are two constructions possible from a provision, of which one gives effect to the provision and the other renders the provision inoperative, the former which gives effect to the provision is adopted and the latter is discarded.** It generally starts with a presumption in favor of constitutionality and prefer a construction which embarks the statute within the competency of the legislature. But it is to be noted that when the presumption of constitution fails, then the statutes cannot be rendered valid or operative accordingly. The landmark case of **Indra Sawhney** (2000), where the Supreme Court struck down the state legislation as it was violative of constitution and ultra-vires of the legislative competency.

(f) Expressio Unius Est Exclusio Alterius

Expressio unius est exclusio alterius is a Latin phrase that means express mention of one thing excludes all others. This is one of the rules used in interpretation of statutes. **The phrase indicates that items not on the list are assumed not to be covered by the statute.** When something is mentioned expressly in a statute it leads to the presumption that the things not mentioned are excluded. This is an aid to construction of statutes.

(g) Reddendo Singula Singulis

Reddendo singula singulis is a Latin term that means by referring each to each; referring each phrase or expression to its corresponding object. **In simple words "reddendo singula singulis" means that when a list of words has a modifying phase at the end, the phrase refers only to the last. It is a rule of construction used**

usually in distributing property. Where there are general words of description, following a record of particular things, such general words are to be construed distributively, and if the general words will apply to some things and not to others, the general words are to be applied to those things to which they will, and not to those to which they will not apply; that is to say, each phrase, word or expression is to be referred to its suitable objects.

The best example of reddendo singula singulis is quoted from **Wharton's law Lexicon**, "If anyone shall draw or load any sword or gun, the word draw is applied to sword only and the word load to gun only, the former verb to former noun and latter to latter, because it is impossible to load a sword or to draw a gun, and so of other applications of different sets of words to one another." The reddendo singula singulis principle concerns the use of words distributively. Where a complex sentence has more than one subject, and more than one object, it may be the right construction to provide each to each, by reading the provision distributively and applying each object to its appropriate subject. A similar principle applies to verbs and their subjects, and to other parts of speech.

(h) Contemporanea Exposito Est Fortissima In Lege

Meaning Contemporaneous exposition is the best and strongest in law. It is said that the best exposition of a statute or any other document is that which it has received from contemporary authority. This maxim has been confirmed by the Apex Court in ***Desh Bandhu Gupta v. Delhi Stock Exchange Asson. Ltd. AIR 1979 SC 1049, 1054*.** Contemporanea exposito is a guide to the interpretation of documents or statutes. It is one of the important external aids for interpretation. However great care must be taken in its application. When a document was executed between two parties, their intention can be known by their conduct at the time and after the execution of the instrument.

Where the words of the deed are ambiguous, the court may call in the acts done under it as a clue to the intention of the parties. Their acts are the result of usages and practices in the society. Therefore, their acts are useful as an external aid to interpretation of the deed. This principle may also be applied in case of statutes. **"Contemporanea expositio est optima et fortissinia in lege" means usage or practice developed under a statute is indicative of the meaning ascribed to its words by contemporary opinion.** The maxim Contemporanea expositio as laid down by Lord Coke was applied to construing ancient statutes, but usually not applied to interpreting Acts or statutes which are comparatively modern.

The meaning publicly given by contemporary or long professional usage is presumed to be true one, even where the language has etymologically or popularly a different meaning. It is obvious that the language of a statute must be understood in the sense in which it was understood when it was passed, and those who lived at or near that time when it was passed may reasonably be supposed to be better acquainted than their descendants with the circumstances to which it had relation, as well as with the sense then attached to legislative expressions. Usages and practice developed under a statute is indicative of the meaning ascribed to its words by contemporary opinion and in case of an ancient statute, such reference to usage and practice is admissible.

He said a uniform notorious practice continued under an old statute and inaction of the legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. According to Lord Ellenborough, Communis opinio is evidence of what the law is. When the practice receives judicial or legislative approval it gains additional weight and is to be more respected.

Q. Discuss the salient features of the General Clauses Act. I897.

The General Clauses Act, 1897 was enacted on March 11, 1897 to combine and expand the General Clauses Act, 1868 and 1887. The general definitions provided under the Act shall be applicable to all Central Acts and Regulation where there is no definition in the Act that conflicts with the provisions of the Central Acts or regulations.

The Act defines 'affidavit' as an assertion and declaration by persons who are authorized by law to do so or proclaim other than for swearing. According to the Act a 'document' shall comprise of any written subject, expressed or depicted upon any material in the mode of letter, numbers or marks or other modes that is planned to be utilized to record that subject. An 'immovable property' means any land, profits that obtained from the land and the things that are appended to the earth or enduringly fastened to any object that are appended to the earth. A 'movable property' means the property of all kind but not including immovable property. The Act further defines a 'person' as a company or organization or group of individuals, whether such body is incorporated or not.

The Act explains the meaning of 'regulation' formulated by the President according to Article 240 and Article 243 of the Constitution and shall comprise of regulations made under the Government of India Act, 1870 or Government of India Act, 1915 or Government of India Act, 1935 by the Central Government. The 'rule' shall mean rule made in exercise of the authority of any legislation and the regulation issued as a rule framed under the legislation.

Where legislation is not specifically mentioned to come into force on a prescribed date, it shall be implemented on the day that it receives the assent of the Governor General before the commencement of the Indian Constitution and thereafter of the President. The regulation shall come into force instantly on the ending of the day prior to its commencement unless expressly provided. Where any Central legislation or any regulation enacted after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- Renew anything not enforced or prevailed during the period at which repeal is affected or;
- Affect the prior management of any legislation that is repealed or anything performed or undergone or;
- Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;
- Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or
- Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

In any Central legislation or regulation framed subsequent to the enforcement of the legislation, it shall be essential to revive any legislation either entirely or partly repealed expressly to provide the purpose. Furthermore, if the present legislation or any Central enactment or regulation made subsequent to the enactment, repeals or restructure with or without amendments of the prior legislation, then the indication in any other legislation or any other mechanism to the provision that has been repealed shall be interpreted as indication to the provision that has been re-enacted. If any Central legislation or regulation made after the implementation of any legislation or procedure is ordered or permitted to be performed or taken in any Court or office on a particular day or within specified time, then if the Court or office is not opened on that day or last day of the specified period, the legislation or proceedings shall be deemed to be performed or taken in due time if it is performed or taken on the subsequent day afterward the Court reopens.

The General Clauses Act is very effective in the absence of clear definition in the specific enactments and where there is a conflict between the pre-constitutional laws and post-constitutional laws. The Act gives a clear suggestion for the conflicting provisions and differentiates the legislation according to the commencement and enforcement to avoid uncertainty.

Q. Discuss the following provisions of General Clauses Act, 1897.
(a) Effect of repeal.

Section 6: Effect of Repeal: Where this Act, or any Act of Parliament or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or
(b) affect the previous operation of any enactment so repealed or anything duly done or suffered there under; or
(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
(d) after any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

The consequences provided by Section 6 applies to all types of repeals whether total or partial, express or implied or whether a repeal simpliciter or a repeal accompanied by fresh legislation ***(Ekambarappa v. Excess Profits Tax Officer, AIR 1967 SC 1541***). It also applies when a temporary statute is repealed before its expiry but it has no application when such a statute is not repealed but comes to an end by expiry. Repeal of a subordinate law by an enactment or repeal of a rule by another rule or repeal of a statute by judicial pronouncement is also out of the attraction of this section. This section may not also be available in cases where rules are repealed merely because it is provided in the enactment under which the rules are made that they shall have effect as if enacted in the Act (***Emperor v. Rajon, AIR 1944 Bom. 250***).

Repeals have prospective Operation only: It is well settled that parliament being the supreme legislative authority subject to the constitutional limitations under Article 65 has the plenary power to pass any law on any subject both prospectively and retrospectively. But in the absence of any express or implied provision in the Act to indicate that the Act will have retrospective effect, the Act would apply prospectively. Whenever an Act, whether amending or repealing, is enacted, it would have operation prospective in nature unless a contrary intention can be ascertained from the consideration of all the relevant provisions of the repealing law. But where the intention as to being retrospective is doubtful the statute would be construed as prospective only (***Maharaj Chintamani Sara Nath Shahdeo, Appellant v. State of Bihar, AIR 1999 SC 3609***). However, in determining the effects of repeal, a distinction is drawn between statute dealing with substantive rights and statute dealing with procedure only.

Repeal of Substantive law: A substantive law is prima facie prospective in its operation. Sec. 6 of the General Clauses Act would apply to legal proceedings in respect of substantive rights which have already accrued under a repealed enactment and would not embrace a case where only a procedural right is granted. It was also observed in ***Maharaj Chintamani Sara Nath Shahdeo, Appellant v. State of Bihar, AIR 1999 SC 3609,*** that "the amending Act affects the substantive right of the appellant; therefore, it would have prospective operation". The reason is that the legislature could not have intended affecting vested rights or to impose new burdens retrospectively unless the words compel the court to give effect to it retrospectively (***R. Rajagopal Reddy v. Padmini, (1995) 213 ITR 340 (SC)***).

(2) Repeal of Procedural Law: Unlike the substantive law, procedural law is always retrospective unless a different intention is expressly made in the statute itself and no one has a right far less a fundamental right, to trial by particular court or a particular procedure, unless any constitutional objection by way of discrimination or the violation of any other fundamental right is raised. But the prohibition under Article 35(1) of the Constitution does not extend to merely procedural laws changing the forum or reducing the trial time and procedural law would not contravene Article 35(1) merely because retrospective effect is given to it (***Bangladesh v. Sk. Hasina Wazed, 60 DLR (AD) 90.***). If a statute deals merely with the procedure in an action and does not affect the rights of the parties, it will be held to apply, prima facie, to all actions pending as well as future and a subsequent omission by way of amendment of a procedure cannot be of any consequence in respect of the proceeding against the litigant. But where a new period of limitation was provided after the cause of action arose, sec. 6 of the General Clauses Act would not apply and the new limitation prescribed by the amending Act would govern the case. However, change in the manner for trial or dismissal of litigation no

more a procedural change of law and hence it is protected by the General Clauses Act. But if the rights under the repealed statutes are saved and the repealing statute does not provide any new procedure applicable to the rights so saved, it would be consequential that the old procedure is saved as the only machinery for enforcing the old rights (***Jatindra Nath v. Jetu Mahato, AIR 1946 Cal 339***).

(3) Repeal of Right of Appeal: An appeal is a continuation of the proceedings of the original suit unless otherwise provided by law and the right of appeal is not a mere matter of procedure but it is a substantive right. This right becomes a vested right on the date the original proceeding is initiated. A statute creating a new right of appeal is prospective in nature and cannot be applied retrospectively unless the law either expressly or impliedly gives retrospective effect to it. So, the right of appeal is to be governed by the law prevailing on the date of filing the suit not on the date of the decision by the court below or the date of filing of the appeal (***Garikapathi v. Subbiah, AIR 1957 SC 540***). But where the appellate court is abolished without providing alternative forum, the right of appeal to the abolished court must perish with its abolishment. However, if a new forum is provided, the right would subsist and the right is to be exercised in the new forum even in respect of old cause of action as a litigant has no vested right to a trial by a particular court.

(b) Computation of time (Section 10).

(1) Where, by any (Central Act) or regulation made after the commencement of this Act, any act or proceeding is directed to allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.

(2) This section applies also to all [Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

Since the last date of the prescribed period was subsequent to the date of notification, declared to be a holiday on the basis of the principles laid down in this section the last date of prescribed period for obtaining the tender schedules was extended to the next working day; ***K. Soosalrathnam v. Div. Engineer, N.H.C. Tirunelveli, AIR 1995 Mad 90***.

(c) Measurement of distance (Section 11).

In the measurement of any distance, for the purpose of any (Central Act) or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

(d) Revival of repealed enactment (Section 7).

(1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

A temporary statute expired considered never had in existence. So, if such a statute expires, it cannot be made effective only by amending it and it can be revived only by re-enacting a statute expressly saying the expired statute is revived ***(Inder Singh v. Rajasthan, AIR 1957 SC 510***).

Q. Write short notes on:

(a) Affidavit: As per Section 3(3) of the General Clauses Act, an "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing,

An affidavit is a **sworn statement of facts** by a person who knows that such facts and circumstances have taken place. The person who makes such statement and signs it is known as a **deponent**. An affidavit is a **written document** signed by the deponent, confirming that the contents of the affidavit are true and correct to his knowledge and he has concealed nothing material therefrom. It is duly attested/ affirmed by the Notary or Oath Commissioner. Such Notary/ Oath Commissioners are appointed by the Court of Law. The duty of the Notary/ Oath Commissioners is to ensure that the signature of the deponent is not forged. Hence, the deponent himself needs to be present before the Notary/ Oath Commissioner during the attestation of the affidavit.

The affidavit must be paragraphed and numbered. The person making the affidavit (the deponent) must sign the bottom of each page in the presence of an authorized person, such as a lawyer. Further, the affidavit must contain the full name, address, occupation and signature of the person (deponent) making such affidavit and the date & place where such affidavit is made. The affidavit must contain facts and circumstances known to a person and must not set out the opinions and beliefs of the deponent. Further, one should avoid referring to facts that are based on information received from others (known as hearsay evidence). However, if the person is giving evidence as an expert; for instance, a psychologist or licensed valuer, then his opinion might be stated in the affidavit.

Affidavit as "Evidence": Affidavit is treated as "evidence" within the meaning of Section 3 of The Evidence Act. However, in the matter of ***Khandesh Spg & Wvg Mills CO. Ltd. Vs Rashtriya Girni Kamgar Sangh, citation 1960 AIR571, 1960 SCR(2) 841***, it was held by the Supreme Court that an affidavit can be used as evidence only if the Court so orders for sufficient reasons, namely, the right of the opposite party to have the deponent produced for cross-examination. Therefore, an affidavit cannot ordinarily be used as evidence in absence of a specific order of the Court.

Further, the law pertaining to affidavits is covered under Section 139 and Order XIX of Code of Civil Procedure, 1908 along with Order XI of Supreme Court Rules. Order XIX of Code of Civil Procedure, 1908 empowers the Court to order at any point of time, any particular fact or facts to be proved by affidavit. But the Court shall not make such order, where it appears to the Court that either party desires the production of a witness for cross-examination and that such witness can be produced.

The Supreme Court in ***Amar Singh v. Union of India and Others***, has issued directions to the courts registry to carefully scrutinize all affidavits, petitions and applications and reject those which do not conform to the requirements of Order XIX of the Code of Civil Procedure and Order XI of the Supreme Court Rules. The Supreme Court has highlighted the importance of affidavits in this judgment and has discussed various judicial pronouncements on the aspect.

(b) Enactment: As per Section 3(19) of the General Clauses Act, "Enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid.

(c) Offence: As per Section 3(38) of the General Clauses Act, "Offence" shall mean any act or omission made punishable by any law for the time being in force.

(d) India: As per Section 3(28) of the General Clauses Act, "India" shall mean- As respects any period before the establishment of the Dominion of India, British India together with all territories of Indian Rulers then under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, and the tribal areas.

As respects any period after the establishment of the Dominion of India and before the commencement of the Constitution, all territories for the time being included in that Dominion, and as respect any period after the commencement of the Constitution, all territories for the time being comprised in the territory of India.

(e) Property: As per Section 3(26) of the General Clauses Act, "Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

(f) Document: As per Section 3(18) of the General Clauses Act, "Document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose or recording that matter.

(g) Union Territory: As per Section 3(62A) of the General Clauses Act, "Union territory" shall mean any Union territory specified in the First Schedule to the Constitution and shall include any other territory comprised within the territory of Indian but not specified in that Schedule.

(h) Collector: As per Section 3(11) of the General Clauses Act, "Collector" shall mean, in a Presidency-town, the Collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere the chief officer-in charge of the revenue administration of a district.

(i) District Judge: As per Section 3(17) of the General Clauses Act, "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction. But shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.

(k) Service by post: As per Section 27 of the General Clauses Act, Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, where the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

(l) Month and Year: As per Section 3(35) of the General Clauses Act, "Month" shall mean a month reckoned according to the British calendar.

As per Section 3(66) of the General Clauses Act, "year" shall mean a year reckoned according to the British calendar.

(m) Central Act: As per Section 3(7) of the General Clauses Act, "Central Act" shall means an Act of Parliament, and shall include- An Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution, and Act made before such commencement by the Governor General in Council or the Governor General, acting in a legislature capacity.

Q. What is the difference between Bill and an Act? How does a Bill become an Act?

Legislative proposals are brought before either house of the **Parliament of India** in the form of a bill. A **bill** is the draft of a legislative proposal, which, when passed by both houses of Parliament and assented to by the President, becomes an Act of Parliament. As soon as the bill has been framed, it has to be published in the newspapers and the general public is asked to comment in a democratic manner. The bill may then be amended to incorporate the public opinion in a constructive manner and then may be introduced in the Parliament by ministers or private members.

A Bill is the draft of a legislative proposal. It has to pass through various stages before it becomes an **Act** of Parliament. There are three stages through which a bill has to pass in one House of Parliament. The procedure

is similar for the Legislative Assemblies of States. The legislative process begins with the introduction of a Bill in either House of Parliament, i.e. the Lok Sabha or the Rajya Sabha. A Bill can be introduced either by a Minister or by a private member. In the former case it is known as a Government Bill and in the latter case it is known as a Private Member's Bill. It is necessary for a member-in-charge of the Bill to ask for the leave of the House to introduce the Bill. If leave is granted by the House, the Bill is introduced. This stage is known as the First Reading of the Bill. If the motion for leave to introduce a Bill is opposed, the Speaker may, in his discretion, allow a brief explanatory statement to be made by the member who opposes the motion and the member-in-charge who moved the motion. Where a motion for leave to introduce a Bill is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon. Thereafter, the question is put to the vote of the House. However, the motion for leave to introduce a Finance Bill or an Appropriation Bill is forthwith put to the vote of the House. After a Bill has been introduced, it is published in The Gazette of India. Even before introduction, a Bill might, with the permission of the Speaker, be published in the Gazette.

After a Bill has been introduced, the Presiding Officer of the concerned House (Speaker of the Lok Sabha or the Chairman of the Rajya Sabha or anyone acting on their behalf) can refer the Bill to the concerned Standing Committee for examination and to prepare a report thereon. If a Bill is referred to a Standing Committee, the Committee shall consider the general principles and clauses of the Bill referred to them and make a report thereon. The Committee can also seek expert opinion or the public opinion of those interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House. The report of the Committee, being of persuasive value, shall be treated as considered advice.

In passing an ordinary Bill, a simple majority of members present and voting is necessary. But in the case of a Bill to amend the Constitution, a majority of the total membership of the House and a majority of not less than two-thirds of the members present and voting is required in each House of Parliament.

If the number of votes in favour and against the bill are tied, then the Presiding officer of the concerned House can cast his/her vote, referred to as a Casting Vote Right. After the Bill is passed by one House, it is sent to the other House for concurrence with a message to that effect, and there also it goes through the stages described above, except the introduction stage. If a Bill is passed by one House is amended by the other House, it is sent back to the originating House for approval. If the originating House does not agree with the amendments, it shall be that the two houses have disagreed. The other House may keep a money bill for 14 days and an ordinary Bill for three months without passing (or rejecting) it. If it fails to return the Bill within the fixed time, the Bill is deemed to be passed by both the houses and is sent for the approval of the President.

In case of a deadlock between the two houses or in a case where more than six months lapse in the other house, the President may summon, though is not bound to, a joint session of the two houses which is presided over by the president of the country and the deadlock is resolved by simple majority. Until now, only three bills: The Dowry Prohibition Act (1961), the Banking Service Commission Repeal Bill (1978) and the Prevention of Terrorist Activities Act (2002) have been passed at joint sessions.

When a bill has been passed, it is sent to the President for his approval. The President can assent or withhold his assent to a bill or he can return a bill, other than a money bill, which is recommended by president himself to the houses, with his recommendations. If the President gives his assent, the bill is published in The Gazette of India and becomes an Act from the date of his assent. If he withholds his assent, the bill is dropped, which is known as absolute veto. The president can exercise absolute veto on aid and advice of council of ministers. Following position can be arrived by reading Article 111 of Indian constitution with Article 74. The president may also effectively withhold his assent as per his own discretion, which is known as pocket veto.

Q. Briefly discuss the different types of Legislative Instruments.

Legislation is a law-making body. Among all the sources of law, legislation is one of the most patent and sovereign source law making. It has all the powers of enacting laws and repealing old laws. The term

"legislation" is derived from two Latin words, legis meaning law and latum meaning to make, put or set. Entomologically legislation means the making or the setting of law. There are two kinds of legislation-Supreme legislation and subordinate legislation.

Definition of Legislation - Some important definitions of legislation are as follows –

Salmond: According to Salmond, "Legislation is that source of law which consists in the declaration of legal rules by a competent authority".

Austin: According to John Austin, legislation includes an activity, which results into law making or amending, transforming or inserting new provisions in the existing law. thus "there can be no law without a legislative act.

Holland: According to Holland, " the making of general orders by our judges is as true legislation as is carried on by the Crown", but we confine ourselves to the use of them term legislation in the sense which is commonly understood.

Kinds of Legislation: According to Sir John Salmond, legislation is either Supreme or Subordinate.
I) Supreme legislation: Supreme legislation is that which proceeds from the sovereign power in the state. It cannot be repealed, annulled or controlled by any other legislative authority. It is enacted by the highest law-making authority in the state. For example, **parliament** in India, USA and England. In England, Supreme legislation cannot be questioned in a court of law. The British Parliament is in every sense of sovereign law-making body. In Britain, the doctrine of parliamentary sovereignty implies supremacy and omnipotence of British Parliament. Therefore. It possesses the power of Supreme legislation. In India and United States of America however, the parliament is sovereign but not supreme because legislation can be declared ultra vires or unconstitutional by a court of law. It may therefore, be amended or altered.

II) Subordinate legislation: Subordinate legislation is legislation made by the authority or other than the supreme authority in the state in the exercise of the power delegated to it by Supreme authority. This is controlled by the supreme authority. Thus, legislative authority is dependent for its continued existence and validity on the supreme authority. It can be repealed. Subordinate or delegated legislation increased in 19th and 20th century because of number of a reaction.

Kinds of subordinate legislation: According to Salmond, delegated legislation is that which proceed from any authority other than sovereign power. Salmond refers to five Kinds of Subordinate Legislation which are as follows –
(1) Municipal legislation
(2) Executive legislation
(3) Colonial legislation
(4) Autonomous legislation
(5) Judicial legislation

(1) Municipal legislation: The municipal authorities are given limited powers to enact laws for their governance. it is called Municipal legislation. It also called bye-laws. The power is conferred by Supreme legislation. for example, Bombay Municipal Corporation, Pune Municipal Corporation etc.

(2) Executive legislation: These powers are expressly delegated to the executive by the Parliament. Executive consists of President, Prime Minister, Governor, and govt. officers, who are interested, with the working administrative department of the State. Parliament simply delegates its functions to the executive to make their own laws. E.g. Defence of India Act. President can make a rule for himself to regulate his office.

(3) Colonial legislation: It is the outcome of colony or colonies. by way of settlement. The colonies of British Empire were delegated with certain legislative authority for their own government. Such legislation is called colonial legislation. For example, laws passed by the Indian legislature before independence

(4) Autonomous legislation: Sometimes the state allows private persons like universities, Railway companies, etc. to make bye-laws which are recognized and enforced by law courts. Such legislation is usually called autonomic. Railway Company may make bye-laws for the regulation of its undertaking. Likewise, a University may take students for the Government of its members.

(5) Judicial legislation: Judiciary is given powers to make certain rules to regulate the procedure. Such act of court during judicial proceeding is called judicial legislation. Bombay High Court Rules, which are rules governing Bombay High Court and matter coming before this Court.

Q. What do you mean by 'Delegated Legislation'? Signify the reason for Growth of Delegated Legislation.

The Constitution of Indian empowers Legislature to make laws for the country. One of the significant legislative functions is to determine a legislative policy and to frame it as a rule of conduct. Obviously, such powers cannot be conferred on other institutions. But keeping in mind various multifarious activities of a welfare State, it is not possible for the legislature to perform all the functions. In such situation, the delegated legislation comes into the picture. Delegated Legislature is one of the essential elements of administration whereby the executive has to perform certain legislative functions. However, one must not forget the risk associated with the process of delegation. Very often, an overburdened Legislature may unduly exceed the limits of delegation. It may not lay down any policy; may declare any of its policy as vague and may set down any guidelines for the executive thereby conferring wide discretion to the executive to change or modify any policy framed by it without reserving for itself any control over subordinate legislation. Therefore, even though Legislature can delegate some of its functions, it must not lose its control completely over such functions.

Meaning: Delegated legislation (sometimes referred as secondary legislation or subordinate legislation or subsidiary legislation) is a process by which the executive authority is given powers by primary legislation to make laws in order to implement and administer the requirements of that primary legislation. Such law is the law made by a person or body other than the legislature but with the legislature's authority.

Legislation by any statutory authority or local or other body other than the Legislature but under the authority of the competent legislature is called Delegated legislation. It is legislation made by a person or body other than Parliament. Parliament thereby, through primary legislation, enables others to make law and rules through a process of delegated legislation.

Need for Delegated Legislation: The process of delegated legislation enables the Government to make a law without having to wait for a new Act of Parliament to be passed. Further, delegated legislation empowers the authority to modify or alter sanctions under a given statute or make technical changes relating to law. Delegated legislation plays a very important role in the process of making of law as there is more delegated legislation each year than there are Acts of Parliament. In addition, delegated legislation has the same legal standing as the Act of Parliament from which it was created.

Delegated Legislation is important because of several reasons. They are-

1. Delegated Legislation reduces the burden of already overburdened Legislature by enabling the executive to make or alter the law under the authority of Legislature. Thus, this helps the Legislature to concentrate on more important matters and frame policies regarding it.
2. It allows the law to be made by those who have the required knowledge and experience. For instance, a local authority can be permitted to enact laws with respect to their locality taking into account the local needs instead of making law across the board which may not suit their particular area.
3. The process of delegated legislation also plays a significant role in an emergency situation since there is no need to wait for particular Act to be passed through Parliament to resolve the particular situation.
4. Finally, delegated legislation often covers those situations which have not been anticipated by the Parliament during the time of enacting legislation, which makes it flexible and very useful to law-

making. Delegated legislation is, therefore, able to meet the changing needs of society and also situations which Parliament had not anticipated when they enacted the Act of Parliament.

Delegated Legislation: Position under Constitution of India: The Constitution of India gives powers to the Legislature to delegate its functions to other authorities, to frame the policies to carry out the laws made by it. In the case of ***D. S. Gerewal v. State of Punjab 1959 AIR 512***, the Supreme Court held that Article 312 of the Constitution of India deals with the powers of delegated legislation. Justice K.N. Wanchoo observed "There is nothing in the words of Article 312 which takes away the usual power of delegation, which ordinarily resides in the legislature.

The phrase "*Parliament may by law provide*" in Article 312 should not be interpreted to mean that there is no scope for delegation in law made under Article312…. The England law enables the Parliament to delegate any amount of powers without any limitation. On the other hand, in America, like India, the Congress can delegate only some of its functions. Thus, it does not have unlimited or uncontrolled powers. Thus, India allows for delegated legislation but in a defined and controlled manner with certain restrictions.

Growth of Delegated Legislation

Many factors are responsible for the rapid growth of delegated legislation in every modern democratic state. The traditional theory 'laissez-faire' has been given up by every state and the old 'police state' has now become a 'welfare state'. Because this radical change I the philosophy as to the role to be played by the state, its functions have increased. Consequently, delegated legislation has become essential and inventible. As American lawyer and statesman Root remarks- "The old doctrine of prohibiting the delegation of legislative powers has virtually retired from the field and given up the fight".

According to the committee on ministers' power the following factors are responsible for the rapid growth of delegated legislation.

(a) Pressure upon parliamentary time: The horizons of state activities are expanding. The bulk of legislation is so great. It is not possible for the legislature to devote sufficient time to discuss all the matters in detail. Therefore, legislature formulates the general policy – the skeleton and empowers the executive to fill in the details – thus giving flesh and blood to the skeleton so that it may live- by issuing necessary rules, regulation, bye-laws etc.

In the words of Sir Cecil Carr, 'delegated legislation is a growing child called upon to relieve the parent of the strain of overwork and capable of attending to minor matters, while the parent manages the main business. ***The Committee on Ministers' powers has rightly observed:*** "The truth is, that if parliament were not willing to delegate law making power, parliament would be unable to pass the kind and quality and legislation which modern public opinion requires."

(b) Technicality: Sometimes, subject matter of legislation is technical in nature. So, assistance of experts is required. Members of parliament may be the best politicians but they are not expert to deal with highly technical matters. These matters are required to be handled by experts. Here, the legislative power may be conferred on experts to deal with the technical problems. i.e. gas, atomic energy, drugs, electricity etc.

(c) Flexibility: Parliament cannot foresee all the contingencies while passing on enactment. To satisfy these demands of unforeseen situation some provisions are required to be made. A legislative amendment is a slow and cumbersome process. But by the device of delegated legislation the executive can meet the situation expeditiously, e.g. bank rate, police regulations, export and import, foreign exchange etc. Therefore, in a number of statutes a 'removal of difficulty' clause has been added empowering the administration to overcome such difficulties by exercising delegated power. This **Henry VIII clause** confers very wide powers on the Government.

(d) Experiment: The practice of delegated legislation enables the executive to experiment. This method permits rapid utilization of experience and implementation of necessary changes in application of the provisions in the light of such experience. As for example, in road traffic matters, an experiment may be conducted and in the light of its application necessary changes could be made. The advantage of such a course is that it enables the

delegate authority to consult interests likely to be affected by a particular law, make actual experiments when necessary and utilize the result of his investigation and experiments in the best possible way. If the rules and regulations are found to be satisfactory, they can be implemented successfully. On the other hand, if they are found to be defective, the defects can be cured immediately.

(e) Emergency: In times of emergency, quick action is required to be taken. The legislative process is not equipped to provide for urgent solution to meet the situation. Delegated legislation is the only convenient-indeed the only possible remedy. Therefore, in times of war and other national emergencies, the executive is vested with extremely wide powers to deal with the situation. There was substantial growth of delegated legislation during the two world wars similarly in cases of epidemics, floods, inflation, economic depression etc. immediate remedial actions are necessary which may not be possible by lengthy legislative process and delegated legislation is the only convenient remedy.

(f) Complexity of modern administration: The complexity of modern administration and the expansion of the functions of the state to the economic and social sphere have rendered it is necessary to resort to new forms of legislation and to give wide powers to various authorities on suitable occasions. In a country like Bangladesh, where control and regulation over private trade, business or property may be required to be imposed, it is necessary that the administration should be given ample power to implement such policy so that immediate action can be taken.
Therefore, there has been rapid growth of delegated legislation in all countries and it becomes indispensable in modern administrative era.

List of Advantages of Delegated Legislation

1. Saves Time for the Parliament: There are lots of overwhelming activities that the government should be concerned about. In order to resolve the complexity and volume that the legislature needs to deal with, the power needs to be delegated to the executive branch. This is because of the lack of time or the capacity thereof in making laws for regulation. Hence, the creation of delegated legislation should be essential to avoid bogging down into the burden of details.

2. Enables Flexibility: Rigidity in administration has been created by statutes, but the administrative legislation can be more adaptable to varying circumstances. Thus, it will be useful in the branches of administration liable for occasional changes and where the technical developments are happening on a day-to-day basis.

3. Dealing with Emergencies: Clothing the administrative agencies with needed discretion should be better in dealing with possible contingencies. Such contingencies might result from the application of laws as the legislature has been unable to foresee or allocate for everyone.

4. Done in Consultation with Affected Interests: In order to make legislation effective, it is important to have prior consultation regarding interests that should be affected. This is because drafting of rules might and oftentimes doesn't allow a conference between vested interests and the government. This can be affected and would result in the agreement bound to voluntary compliance.

5. The Average Legislator: Since an average legislator is not so acquainted with the difficulties of the modern legislation, it is important to note that this legislator passes the bill in basic form and leaves details to be accomplished by the executive branch.

6. Influence of Science and Technology: The impact of science and technology has resulted to the multiplication of functions of the modern state. Thus, the power of the legislature has been enhanced considerably. As it is not capable of coping with powers on the rise, the delegation of power in lawmaking has been passed to the executive.

7. Sets Up New Standards: The increase in the delegated legislation can likewise be attributed to the requirement of setting up new standards in social interest. Thus, expert minds are needed to make sure that the national minimum regarding health education, housing, and sanitation has been due to everybody.

8. The Administrative Legislation Provides for Expert Legislation: The rules are being drafted by the experts familiar with actual conditions in appropriate departments. With this practice, they are able to work better compared to the lay members comprising the legislature.

List of Disadvantages of Delegated Legislation

1. Undemocratic Procedures: Legislation comes as a result to undemocratic processes and procedures. In terms of by-laws, it is arguable that those are democratic considering they are created by elected bodies. Thus, they can only make by-laws in so far as they have been given authority to do so based on an enabling Act of the local government.

2. Apparent Lack of Debate: The apparent lack of debate and publicity that should be associated with a form of secondary legislation has also been noticeable. The enabling Act should have been subject for some public debate as well as consultation delegated by the legislation with its very nature to be a lot wordy and more complex meaning which will not be that easy to be understood or be accessible by the people.

3. Problem of Sub-Delegation: The arousal of sub-delegation may come when the responsible body for the creation of legislation has not been able to deal with it directly. Thus, the creation of sub-delegation will give the job to other parties. As a result, this will cause problems as the other parties should not be accountable at the same way as those who created the legislation.

4. The Wording of Delegated Legislation: Another problem when it comes to delegated legislation is the wording that can be obscure and technical in nature that should make it hard to understand. This was the trait shared with the Acts of Parliament.

5. Dependence on Individuals Making Claims to Review Legislation: One more limitation about delegated legislation is that it renders the courts unable to review such legislation. Thus, it will become dependent to those who made the claim and brought the matter to the courts' attention. Since the courts don't have any general authority to keep such legislation to be reviewed, it poses a problem. This is because the process should be time-consuming and costly. More so, reviewing the matter can only be conducted if the individual claims do have the necessary funding. As a result, the effectiveness of the judicial review to remedy this condition should be severely limited.

6. Influence of the High Courts: In comparison to the primary legislation, the term delegated legislation can be influenced by the High Court. Hence, they can quash the said legislation as it has been made by people who aren't directly elected. Thus, it could limit the control of their power. Nevertheless, it can be dependent on the people making those claims as they bring matters in consideration of the courts.

Conclusion: The time of the Parliament has been limited and the government will have a legislative program that should keep the Parliament busy. Thus, the Parliament will have no time to scrutinize the debate complex and regulations and technical rules. Perhaps the advantages and disadvantages presented here can provide a clear understanding regarding the significance or insignificance of delegated legislation. It may or may not be a significant factor for some, but it should be a concern for everyone.

Q. What do you mean by the term 'Sub-delegation of Legislative Power'?

When a statute confers some legislative powers on an executive authority and the further delegates those powers to another subordinate authority of agency, it is called 'sub-delegation.' Thus, a chain of delegation gets created in which the origin of the power flows through the Parent Act.

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Sub-delegation of power of delegated legislation is justified only where the parent statute expressly or impliedly authorizes the delegate himself to further sub-delegate that power to anyone else. The maxim, Delegatus non-potestde legare is a well-known maxim which means that in the absence of any power a delegate cannot sub-delegate its power to another person's. Thus, when an Act prescribes a particular body to exercise a power, it must be exercised by that body and none else unless the Act by express words or necessary implication permits such delegation. When a sub-delegation is made, it does not divest the authority making sub-delegation of his statutory authority. A sub-delegation is not permissible unless the said power is conferred expressly or by necessary implication and in the absence of such an express authorisation, legislative power cannot be sub-delegated. A leading case in this aspect is ***Ganapati v. State of Ajmer***. Here the parent act empowered the chief commissioner to make rules for the establishment of a proper system of conservancy and sanitation. The chief commissioner made a rule which empowered the district magistrate to devise his own system. The Supreme Court held that the rule made by the district magistrate was invalid since it was a sub-delegation without an express authority. But if the parent article authorizes to sub delegate, then it can be validated. If the parent Act permits sub delegation to officers or authorities not bellow a particular rank, then the power can be delegated only to those officers or authorities. Here it may be mentioned that the authority cannot go beyond the power delegated. should not be given uncanalised and unguided legislative power. Like delegation, sub-delegation is also subject to the doctrine of excessive delegation. Where a statute itself authorizes an administrative authority to sub-delegate its powers, no difficulty arises as to its validity since such sub-delegation is within the terms of the statute itself.

However, as sub-delegation dilutes both accountability and oversight of the original administrative authority, safeguards are necessary for their functioning. The sub-delegate should not act beyond the scope of the power delegated over it. At the same time, it's important that, the sub-delegation should not be vague and must be free from any irregularities. One of the vital aspects about the sub-delegated legislation is, it must get mandatorily published to be operative.

Q. Explain the Bentham's theory of utilitarianism.

Utilitarianism is an English philosophy. It played an important role in the first half of the 19th century. It affected the reforms of far- reaching character in the legal, economic and political spheres. David Hume was the founder of this theory and it was professed by Priestly, Hutcheson and Paley. Helvetius and Bacaria contributed it but it was first aroused and popularised by Jeremy Bentham.

Jeremy Bentham was an English thinker. Bentham's two books 'Fragments of Government' and 'Introduction to the Principles of Morals and Legislation' explain the doctrine of utilitarianism. He used the term utilitarianism in a most scientific way, gave the philosophy a systemic touch and made it a popular school of thought.

CONCEPT OF UTILITY - Bentham started with the presumption that the cherished desire of every individual is to embrace pleasure and happiness. Man, by nature is repulsive to miseries and pains. He always tries to keep away pain. So, every man seeks pleasure and avoids pain. He believed that everything in the society should be considered in terms of utility. To him utility meant maximum pleasure and happiness.

According to him, "Nature has placed mankind under the governance of two sovereign master's pleasure and pain. It is for them alone to point out what we ought to do as well as to determine what we shall do". So, for Bentham everything was to be valued, measured and accepted only in terms of pleasure and happiness. So, utility to him is synonymous with pleasure. He said that utility of all laws and actions of our legislators should be measured in terms of happiness and pleasures which they give.

FACTORS OF MEASURING UTILITY- Bentham views that there are 7 factors or measuring rods for testing the extent of utility of an action. They are intensity duration, certainty, propinquity, purity, fecundity and extensiveness. According to Bentham these 7 factors create quantitative difference in pleasure and pain.

1. Intensity means efficaciousness or ability to produce intended result.
2. Duration means length of time, how long the pleasure or pain lasts.
3. Certainty means consideration of surety and definiteness.

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4. Propinquity means nearness.
5. Purity means unmixed unconditional.
6. Fecundity means capacity of being productive or barren.
7. Extensiveness means the number of persons included.
These seven factors influence pleasure or pain.

MATHEMATICAL CALCULATIONS - Both pleasures and pains can be calculated in quantity. For the purpose of mathematical calculation, he suggested to calculate in units. Pleasures and pains have quantitative difference.

FOUR SANCTIONS - According to Bentham there are four sanctions regarding pleasure and pain.
1. Physical or natural sanctions-The physical or natural sanction comprises the pleasure and pain which have been given by nature experience in the ordinary course of nature and which are not obtained by any human effort.
2. Moral or popular sanction-The moral sanction implies the sanction by the hands of our fellow beings prompted by the feelings of goodwill or hatred, contempt or regard.
3. Public or legal sanction-Public or legal sanction comprises such pleasure or pain which is given to the individuals by the magistrates in exercise of their legal powers.
4. Religious Sanction- Religious sanction comprises such pleasure as we experience or expect from pore bodings of religious doctrine.

Bentham observes that the application of these sanctions is never uniform and subject to the conditions and circumstances. These do not act upon all men in the same way with same effect.

KINDS OF PLEASURE AND PAIN - According to Bentham there are two kinds of pleasure simple and complex.
i. Simple pleasures are those which cannot be resolved into others. We get simple pleasures from senses, wealth, skill amity, good name, power, piety, benevolence, malevolence, memory, expectation, assistance, relief etc.
ii. Complex pleasures are those which can be resolved into various simple ones.

Similarly, there are two kinds of pains.
i. **Simple Pains**-We get simple pains from awkwardness, enmity, ill-repute etc.
ii**. Complex Pains**-Complex pains are those which can be resolved into simple ones. Bentham believed that man is governed by pleasure and pain both simple and complex in one form or the other.

OTHER FACTORS-These certain other factors which influence on pleasures and pains and plane important role on the effect of government. They are health, strength, physical imperfection, power of mind, moral sensibility, habit, financial status, religious views, age, sex, policies of government etc. According to Bentham every human action should be judged by the standard of social usefulness.

THE GREATEST GOOD OF THE GREATEST NUMBER-
Each government is obliged to adopt such policies which could give the greatest good of the greatest number. That government is good which can ensure maximum happiness to the maximum number of people. A government which works for the good of a few numbers is not at all good government.

CONCEPTION OF STATE-To Bentham the state is a law-making agency. According to him the state is a group of persons organized for the promotion and maintenance of happiness. But for this end, it acts through law. By enforcing law, the state rewards or punishes so that the happiness is increased and pain is decreased. Thus, all laws should be useful to human society. The aim of the state is the promotion of the maximum happiness of the maximum people. So, the functions and policies of the state are tested on the basis of utility.

CRITICISM OF BENTHAM'S CONCEPT OF UTILITARIANISM
1. CONCEPT IS OVER-SIMPLIFIED -According to Bentham embracing pleasure and avoiding pain is the motivating force behind all human activities. He has also tried to classify all pleasures and pains into simple and

complex. In addition, he has put them into a tabulated form. His concept is over- simplified. It cannot be applied in modern Complex human life.

2. PEOPLE ARE NOT ALWAYS MOTIVATED BY UTILITY ONLY-According to Bentham people are always motivated by utility or consideration of pleasure and pain. Critics opine 10 utility maybe one of the factors but not the sole factor. Human beings are motivated also by nationalism, religion, culture, ideology, social situation, love and affection norms, customs, values etc.

3. IT IS MATERIALISTIC THEORY- Bentham has made this theory purely materialistic. In his whole theory there is no place for moral or immoral, just or unjust action by which every person should be guided in his personal life as well as social life.

4. HE HAS NOT PLEADED FOR COLLECTIVE PLEASURE- He has failed to understand the importance of collective pleasure. He has given importance only on individual pleasure. Human beings live in society. He has forgotten that individual without society is incomplete. He should have pleaded for collective pleasure. Individual can attain true pleasure while living with others in society.

5. PLEASURE HAS NO UNIVERSAL CHARACTER- The concept of pleasure differs from one person to another, from one place to another place. It has no universality and to give it a universal outlook is something which is not only impossible but impractical one.

6.GREATEST GOOD OF GREATEST NUMBER CANNOT BE REALIZED IN PRACTICE- In our actual social life we find that there are few actions which produce greatest happiness but not to the greatest number of people and there are few actions which give less happiness to greatest number of people. In such situations Bentham has not suggested the right course of action to be preferred and followed, especially when an action might not produce greatest happiness for greatest number of people.

7.MATHEMATICAL COMPUTATION OF PLEASURE AND PAIN CANNOT BE POSSIBLE- Critics opine that pleasures and pains are subjective and not objective things. Exact calculation is not at all possible. Bentham's calculus is impossible not only in practice but also in theory.

8. HE DID NOT LAY STRESS ON QUALITY OF PLEASURE- He advocated for quantity of pleasure. He did not lay stress on quality of pleasure. John Stuart Mill said that it is better to be a human being dissatisfied than a pig satisfied, better to be a Socrates dissatisfied than a fool satisfied.

9. IT IS AN OUTDATED THEORY- According to Bentham immediate pleasure is always preferred over deferred pleasure, but this conception cannot be accepted in reality. For example, expenditure on a particular project may not result in immediate benefits to the society but for succeeding generations it will be beneficial. Expenditure on research work will be fruitful in future. So, this conception cannot be accepted in many cases.

10. DEPICTED WRONG VIEW OF HUMAN NATURE- An individual is not always selfish and self-centered in nature. He is not concerned only for his personal happiness. Sometimes he sacrifices his own happiness for the happiness of others. The altruistic nature of human being is not at all mentioned in Bentham's theory.

11. IT IS IMMORAL THEORY- Bentham preached that pleasure should be the only measuring rod for each and every action. In other words, according to him the sole aim of life is to get enjoyment. The life is to be enjoyed and pleasure to be derived out of it. This theory of Bentham has been criticised as immoral, debasing and degrading.